

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

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KAREN ALLEN,

Plaintiff(s),

v.

No. MSC12-00880

NRG SYSTEMS; RENEWABLE RESOURCES
WESTERN DEVELOPMENT AND STORAGE, LLC;
SHAH CORPORATION, et al.,

Defendant(s).

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9:12 a.m.

May 29, 2014

DEPOSITION OF LLOYS FRATES

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Reported by: SHERREE L. BLAKEMORE, CSR No. 7144

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Also Present: D. Cole Frates

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INDEX

Examination of Counsel	Page
Mr. Dreyer	6,172,176
Mr. Pardo De Zela	168
Ms. Knudtson	172
Mr. Brasch	169
Ms. Van Der Putten	174

INDEX OF EXHIBITS

EXHIBIT	PAGE
203 Bates: RRGWDS111 Docment: Met Tower Permitting/Installation	--
204 Bates: RRGWDS 1045-1054 Letter to Lloys Frates August 9, 2010 From Power Engineers Title: Final Interconnect Feasibility Studies	--

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8 RENEWABLE RESOURCES, et al.,

9 Defendant(s).

10 _____/

11 BE IT REMEMBERED that on May 29, 2014, commencing at
12 the hour of 9:12 a.m., at the Law Offices of Donahue &
13 Davies, 1 Natoma Street, Folsom, California, before me,
14 SHERREE L. BLAKEMORE, a Certified Shorthand Reporter,
15 License No. 7144, there personally appeared

16
17 LLOYDS FRATES

18
19 called as a witness herein; and after having been first
20 duly sworn to tell the truth, the whole truth and nothing
21 but the truth, was examined and testified as follows:

22 ---o0o---

EXAMINATION BY MR. DREYER

BY MR. DREYER: Can you state your name for the record, please?

A Sure. Lloys Frates.

Q Ms. Frates, my name is Roger Dreyer. I've just introduced myself to you. I represent the heirs of Steve Allen, who was killed back in January of 2011, as I know you know.

And we're here today to ask you questions, relative to your knowledge and involvement with RRG. Okay?

A Yes.

Q Now, have you ever had your deposition taken before?

A No, sir.

Q All right. Lawyers hate hearing the admonitions because we're constantly doing it in depositions, so the admonitions would be simply the rules, so to speak, of how you proceed.

I am confident that your attorney has already discussed them with you, but I'm just going to give you a couple of reminders so they're on the record. All right?

A (Nods.)

Q It's important for Sherree, our court reporter, that you speak out loud when you respond. You and I can communicate by seeing you move your head or nod, that sort

1 of thing, but it's really important that you use your
2 voice so that she knows what you mean by a particular
3 response. So use words. All right?

4 A Understood. Yeah.

5 Q And I know you teach, so you understand the
6 importance of communication and making sure that you give
7 a good, clean answer.

8 You're under oath, which means our expectation --

9 MR. DREYER: And I'd ask -- Cole, I'd ask you to
10 listen to me so I don't have to repeat them. All I'm
11 going to do is say: Do I need to go through the
12 admonitions with you again that I'm going to give your
13 sister. Okay?

14 MR. FRATES: Okay.

15 Q MR. DREYER: You're under oath. So while we're
16 really informal and we're not in a courtroom, we are. She
17 has the ability to put you under oath. So our expectation
18 is you're going to tell us the truth. And if we go to
19 trial and you say something different, then we'd be able
20 to pull out the transcript and comment on the difference
21 in your testimony, and then make a comment that's not
22 positive, that you're not telling the truth.

23 And that's why it's really important that you do
24 tell the truth, because everybody in the room is relying
25 on it. You understand that someone died, so it's an

1 important case. Okay?

2 A Yes.

3 Q Do you have any problem with assuring us that you
4 will tell us the truth in response to any and all
5 questions I have?

6 A I have no problem in assuring you of that, yeah.

7 Q Okay. All right. Now, in telling the truth,
8 sometimes people, when they talk about things that
9 happened years ago, want to believe certain things
10 happened. And they will say things that they may be
11 speculating about, versus something they remember. So I
12 don't want you to guess today. I'm certain you've had an
13 opportunity to review materials, and we'll go through that
14 in a minute. But it's really important that you tell us
15 what you remember; not what you think happened or you wish
16 happened or you hoped happened.

17 Do you see the distinction?

18 A Yes.

19 Q If you don't remember, you can tell me, "I don't
20 remember." But understand, that's your testimony under
21 oath. So I'm going to ask you repeatedly today, is there
22 something that could refresh your recollection when you
23 say you don't know. Because what I don't know want to
24 have happen is you tell me you don't know today and then
25 come in to trial and have a very detailed memory. All

1 right? Because then, again, I'll make the comment, well,
2 maybe you weren't telling us the truth to begin with.

3 Okay?

4 A Yes.

5 Q And my preference is I never have to do that. I'd
6 like to just be able to count on what you tell me today.

7 Okay?

8 A Yes.

9 Q All right. If I ask you a question you do not
10 understand, that's your job to tell me that. If you don't
11 understand something, I'm going to rephrase it until you
12 do. Okay?

13 A Yes.

14 Q All right. And every time you answer my question,
15 I'm going to assume that you understood it. Okay?

16 A Okay.

17 Q All right. Now, in preparation for today, did you
18 review any materials?

19 A I did, yes. There was a packet provided to me of
20 mostly e-mails --

21 Q All right. And --

22 A -- from the time -- or from before the accident.

23 Q All right. And in terms of those documents, do you
24 have them with you today, or are they at your home? Where
25 are they?

1 A They're actually in the library here.

2 Q Okay. And when did you review those materials?

3 A Yesterday and the day before.

4 Q All right. And you say they're, essentially,
5 e-mails?

6 A I think they're all e-mails and then attachments
7 that -- documents that were attached to e-mails. In
8 addition, there's one letter that was in the packet.

9 Q And that letter was what?

10 A It was a letter from Ari Swiller at Renewable
11 Resources Group to one of our consultants about work they
12 had done on the project to Kennedy/Jenks, I believe.

13 Q Okay. And all the materials you reviewed have
14 assisted you in refreshing your recollection about the
15 sequence of events, I take it?

16 A Yes, sir.

17 Q All right. So it was helpful to you to review these
18 materials to get your mind, so to speak, wrapped back
19 around what happened and what your recollection was.

20 A Yes.

21 Q Okay. All right. So I'll talk about that with
22 Mr. Donahue at the break.

23 Now, let's talk a little bit about you. Highest
24 level of education?

25 A I have a doctorate.

1 Q In?
2 A History.
3 Q When?
4 A 2002, from UCLA.
5 Q And other than your doctorate, kind of working down,
6 do you have a master's?
7 A I do.
8 Q In?
9 A In African studies.
10 Q And where did you get that?
11 A UCLA.
12 Q When?
13 A 1994.
14 Q And your undergraduate degree was where and when?
15 A I have a BA in history and international studies
16 from Sweet Briar College.
17 Q Is that in Oklahoma?
18 A No. It's in Virginia.
19 Q Okay. And when did you get that?
20 A 1988.
21 Q Your date of birth?
22 A August 4th, 1966.
23 Q Now, are you affiliated with RRG, WDS?
24 A Yes. I have been an employee of RRG since 2003.
25 Q And what was your position when you were hired?

1 A We don't really have titles and positions, as such.

2 I think my title is principal. And --

3 Q Who hired you?

4 A Ari Swiller and Cole Frates.

5 Q And are you still an employee of RRG?

6 A Yes, sir.

7 Q And you're on a salary?

8 A Yes, sir.

9 Q And has that been the case since 2003?

10 A I was on contract in '99, for about a year before I
11 became on salary. I don't know the exact time frame, but
12 it was about a year.

13 Q Okay. So you started in '03 on contract?

14 A Yeah, as a consultant; and then came on full-time.
15 I don't know if it was a year or 18 months, somewhere in
16 there.

17 Q And a consultant to consult in what capacity? What
18 were going to be your responsibilities or duties?

19 A Yeah. My duties at RRG have been pretty consistent
20 from the beginning, which has been to -- sorry, I'll try
21 and explain it. Eventually, people -- a project comes in
22 to RRG, whether I bring it in or someone else. And it's
23 kind of my job to vet it and put some structure around it,
24 essentially, create a business plan for that project,
25 figure out what the budget is going to be, things like

1 that.

2 Q And the type of projects that you bring in or that
3 come in are what?

4 A Primarily, water, agricultural, are the two main
5 ones. And then in the cases where we have land that has
6 energy potential, we have looked at developing that energy
7 potential.

8 Q And by "energy potential," are you talking about
9 wind?

10 A We focus only on renewables, wind and solar. And we
11 consider some biomass, but we've never done a biomass
12 project.

13 Q Have you had solar projects?

14 A Yes, sir.

15 Q All right. And have you had wind projects?

16 A Yes. Um -

17 Q Okay. We'll go through those.

18 A Okay.

19 Q Now, as far as your life experience before 2003,
20 let's -- first of all, let's talk about aviation.

21 Any aviation experience other than, you know, flying
22 commercial somewhere? Talking about as a pilot, any kind
23 of training, experience, things of that nature?

24 A No, sir.

25 Q Now, you were raised in the midwest. Right? Or

1 where were you raised?

2 A Oklahoma.

3 Q Okay. There's farming out there. Right?

4 A There is. Although we grew up in the city.

5 Q All right. Have you ever been involved in any kind
6 of farming efforts?

7 A Yes, I have. But not previous to working for RRG.

8 Q Yeah. We're just talking 2003 and before.

9 A Okay.

10 Q So no farming experience or exposure growing up or
11 up through 2003?

12 A No.

13 Q Correct?

14 A Yes, that's correct.

15 Q Are you familiar with the term "crop duster"?

16 A Yes.

17 Q Okay. What's a crop duster?

18 A It's a plane that flies over fields and puts
19 chemicals on it.

20 Q Okay. Have you ever seen them?

21 A I don't know that I've seen one flying. I've seen
22 them on the ground at these small airports around
23 California.

24 Q Okay. Have you ever seen a crop duster in action,
25 so to speak, where you're actually observing it?

1 A No.

2 Q So even up to today's date, you've never seen a crop
3 duster?

4 A Not that I can remember.

5 Q Have you ever seen it on TV or a movie, things of
6 that nature?

7 A Yeah. Yeah, yes.

8 Q Okay. So you understand that these are agricultural
9 aviators who fly low and drop seeds and chemicals and
10 things of that nature on farming, agricultural areas?

11 A Yes.

12 Q Okay. And in that context, whether you've seen it
13 on TV or a movie, or just your impression or
14 understanding, you understand that these planes and these
15 aviators will fly at less than 100 feet. True?

16 A Um - I don't know exactly how many fleet they fly
17 at. But I've seen them in movies and on television,
18 putting chemicals on fields.

19 Q Okay. You understand they also put seeds in fields?

20 A I didn't understand that until now, but --

21 Q Okay. All right. Well, don't take my word for it.
22 You're aware that seed is spread by crop dusters?

23 A I was not aware of that until recently, or until
24 now.

25 Q Now, in terms of feet -- do you have a sense that

1 they would go low in dropping chemicals, so that the
2 chemicals just don't go in the air?

3 A Yes.

4 Q Okay. And you've obviously, you know, been on the
5 planet for a while, so you understand actual footage in
6 terms of what is the length for football field, for
7 example, or 50 yards, or something like that. True?

8 A Yes.

9 Q Okay. You do have an understanding that crop
10 dusters in agricultural areas will fly at less than a
11 hundred feet. True?

12 A I mean, I know that they fly low. Right.

13 Q Okay. How low do you think they fly?

14 MR. DONAHUE: Don't guess or speculate.

15 Q BY MR. DREYER: Yeah. What I'm looking for here,
16 just so you know, Ms. Frates, is I'm looking for your
17 state of mind. I'm not asking -- you could be wrong. I'm
18 just asking for what Lloys Frates thinks, in her mind's
19 eye, what she understands before 2003 how low crop dusters
20 go. How low would you think they go?

21 A Close to the field, I mean.

22 Q Okay. Within what distance, would you be
23 comfortable saying?

24 A I would be guessing. So --

25 Q That's fine. I'm just looking for your state of

1 mind.

2 MR. DONAHUE: But don't guess. I mean, if you know,
3 tell him. If you had a thought, tell him. If you did,
4 that's fine, too.

5 THE WITNESS: I mean, I'm sitting here trying to
6 think in my head what it would look like. It just -- I
7 think I can't guess an exact number of feet.

8 Q BY MR. DREYER: Okay. Let me make sure you
9 understand my question.

10 In your business with RRG, you folks deal with
11 agricultural land. Correct?

12 A Yes, sir.

13 Q You know that you have some involvement in farming
14 operations. Right?

15 A Yes.

16 Q Okay. And you understand that crop dusters are part
17 of the agricultural industry in some capacity. True?

18 A In some capacity, yes.

19 Q All right. And you knew that, certainly, before
20 2008. Fair?

21 A Yes.

22 Q Okay. And you had an impression that while you may
23 not have sat out on a field and actually seen a crop
24 duster do his job or her job, you've seen -- you have, in
25 your mind's eye, what crop dusters do. True?

1 A Yes.

2 Q All right. And as of 2008, if someone were to ask
3 you and say, "Well, Ms. Frates, do you think crop dusters
4 go below a hundred feet to put chemical applications on a
5 field," what would you say?

6 A Yes. Below a hundred feet, yes.

7 Q Okay.

8 A Anywhere between zero and a hundred. I wouldn't
9 know exactly what to say.

10 Q And I'm not looking for exact. Just if someone
11 asked you do you think that they fly -- in 2008, do you
12 think that a crop duster -- you know, you're an educated
13 person, you've got life experience. If someone said to
14 you, "Do you believe that crop dusters go under a hundred
15 feet as of 2008," in your mind's eye, you would have said
16 yes. True?

17 MR. DONAHUE: Asked and answered. She just stated
18 that.

19 Q BY MR. DREYER: True?

20 MR. DONAHUE: You can answer.

21 THE WITNESS: Yes.

22 Q BY MR. DREYER: Okay. Now, have you ever known a
23 crop duster or an agricultural pilot?

24 A No.

25 Q So it would be fair to say, as of 2008, Ms. Frates,

1 you had no real knowledge, personal knowledge, as to the
2 job duties and responsibilities of an agricultural
3 aviator. True?

4 A Yes.

5 Q And as of 2008, had you ever managed or been
6 involved in management of any kind of agricultural
7 operation?

8 A As of 2008, yes. We had purchased the Onyx Ranch.

9 Q Okay. And what qualified -- were you involved at
10 all in the management of the Onyx Ranch?

11 A Yes.

12 Q And did it have agricultural aspects to it?

13 A Yes.

14 Q What qualified you to be involved in managing this
15 operation? In your mind's eye, if I were to ask you what
16 your qualifications were, what would you say they were as
17 of 2008?

18 A What qualified me is that I have extremely good
19 organizational skills. And I'm good at managing teams of
20 people. And managing a project is managing a team of
21 people.

22 Q Okay. Anything else?

23 A My work experience at RRG previous to purchasing the
24 Onyx Ranch.

25 Q Okay. Had you ever been involved in the operation

1 of an agricultural project before Onyx Ranch?

2 A Not in the operation of one. We had leased
3 agricultural land to farmers on another project.

4 Q Okay. And were you involved in the leasing
5 operation?

6 A Um - yes. I mean --

7 Q Okay. What was your involvement in the leasing
8 operation?

9 A Just in the, sort of, business aspects of the
10 leases.

11 Q Okay. Did you have anything to do with managing
12 what they did on the property?

13 A No, other than making sure it complied with the
14 lease.

15 Q Okay. But it was always agricultural?

16 A Yes. We had some carrot farmers on another project.

17 Q Okay. And that project, the property is called
18 what?

19 A The Antelope Valley Water Bank.

20 Q Would you agree with me, Ms. Frates, that you -- as
21 of 2008, you really didn't know anything about the
22 day-to-day operations of a farming or agricultural
23 endeavor?

24 A Other than what I have learned on the job and
25 through the diligence on the Onyx Ranch, no.

1 Q Okay. What had you learned on the job that would
2 give you any kind of expertise in day-to-day operation of
3 a farming or agricultural effort?

4 A Well, obviously, we did a lot of diligence on the
5 purchase of the ranch. And a lot of that was farming
6 diligence. And I ran that effort. And we hired
7 consultants that are farmers and farm managers. And I
8 worked with them.

9 Q All right. So that was -- your management skill of
10 hiring the right people to do the diligence as to the
11 day-to-day farming operations?

12 A Yes. But I am not a farmer.

13 Q You didn't know how to operate a farm day-to-day.
14 True?

15 A No, sir.

16 Q Is that a correct statement?

17 A Yes.

18 Q Okay. So you relied on experts to tell you this is
19 an appropriate type of methodology of use of the land?

20 A Yes, sir.

21 Q Okay. Now, any -- before you came to work for RRG,
22 had you any experience in the electrical industry?

23 A No.

24 Q Any experience in wind energy, you know, harnessing
25 wind as an energy producer?

1 A Only through environmental organizations and
2 volunteering with environmental organizations.

3 Q Okay. So what did you do in that regard as it
4 related to wind-to-energy?

5 A Essentially, pushing for -- or advocating for more
6 use of renewable resources like wind and solar.

7 Q And were you involved on a board or something of
8 some effort?

9 A No. Just as a volunteer.

10 Q Okay. So tell us where you volunteered.

11 A I volunteered before 2008 with Green Peace, and also
12 with an organization called End Oil.

13 Q That's how you met Mike Kaschak?

14 A That's true, yes. And I was on the board of End
15 Oil.

16 Q Okay. Did End Oil have any specific involvement in
17 developing wind energy?

18 A No. Just advocating for renewable energy,
19 generally.

20 Q Did Green Peace have anything that dealt
21 specifically with wind-to-energy projects, evaluating and
22 dealing with that?

23 A When I worked with them, it was not related to that.

24 Q Okay. So at some point in time with RRG, RRG did
25 get involved in developing and assessing wind-energy

1 projects. True?

2 A Yes.

3 Q That was the first time you ever had any specific
4 involvement in that kind of industry. Fair?

5 A Yes.

6 Q Understanding you -- politically or environmentally,
7 you might have an interest in renewable resources through
8 your life. But as to actually being involved in projects
9 trying to harness wind as an energy producer, that never
10 happened before your affiliation with RRG. True?

11 A That's correct.

12 Q And so when was the first time you ever had anything
13 to do with that, when you were affiliated with RRG?

14 A When we began to look at purchasing the Onyx Ranch.

15 Q All right. Now you would agree with me, Ms. Frates,
16 you didn't know anything about the actual science, if you
17 will, of harnessing wind energy. True?

18 A That is true.

19 Q Okay. And everything that you've learned in that
20 context has been through your efforts to develop it at
21 RRG?

22 A And -- yes, and through the consultants we've worked
23 with that know about these things.

24 Q Okay. You relied on the consultants?

25 A Yes, sir.

1 Q Like Richard Simon; you've relied on Mr. Simon?

2 A Yes, sir.

3 Q You've relied on people like Echelon in the
4 installation of the met tower?

5 A Yes.

6 Q Okay. Now, the FAA, you obviously know what the FAA
7 is?

8 A Yes.

9 Q All right.

10 A Federal Aviation Administration.

11 Q All right. And had you ever had any dealings with
12 the FAA before 2008?

13 A Other than going through airport security, no.

14 Q All right. We've all had that wonderful experience.

15 Did you have any understanding that the FAA had any
16 requirements, relative to warning devices for aviators to
17 be placed on towers at certain heights, before 2008?

18 A Before 2008. I don't know when I was made aware of
19 it, but at some point, either during Onyx Ranch or this
20 project, it came up that at 200 feet, the FAA has some
21 involvement. I don't know what it is, but --

22 Q Okay. How did you become aware of that?

23 A Through the consultants.

24 Q Which consultant?

25 A I can't tell you specifically.

1 Q Can you tell me --

2 A I wouldn't want to guess.

3 Q Okay. Guessing means making something up. Okay?

4 I'm entitled to your best recollection. And during the
5 course of this deposition of you and your brother, I'll be
6 asking: Okay, who would be the group of people that
7 potentially would have exposed you to this concept.

8 Understanding you can't remember a specific person, it
9 would have been from this person, this person and this
10 person, maybe that sort of thing.

11 So understanding that distinction between guessing
12 and your best recollection, do you have a sense of who
13 would have been your source, the group of people that
14 would have been your source about the FAA restrictions?

15 A Most likely, it would have been Rich Simon, because
16 he is the consultant with whom I spent the most time
17 speaking about that.

18 Q And that's V-BAR?

19 A V-BAR and Sandbar; he goes under two names.

20 Q All right. And after the event involving Mr. Allen
21 and his death, is that something you became more aware of,
22 relative to the FAA regulations and requirements?

23 A No, I don't think so.

24 Q So your knowledge today is the same as it was back
25 before Mr. Allen was killed?

1 A Yes.

2 Q All right. So understanding -- again, you may be
3 completely wrong or you may be completely right. I'd like
4 your best understanding before Mr. Allen's death of what,
5 if any, restrictions the FAA had on towers, relative to
6 once they got to a certain height.

7 A My understanding was that, if anything, not just a
8 tower, anything is over 200 feet, the FAA becomes
9 involved. In what way they become involved, I do not
10 know.

11 Q Has anyone ever shown you the FAA regulations,
12 relative to what has to happen with a tower 200 feet or
13 taller?

14 A No.

15 Q Okay. And do you know how the 200-foot measurement
16 is calculated?

17 A No.

18 Q Have you ever asked anybody to show you the FAA
19 regulation?

20 A No.

21 Q Have you ever asked anybody to explain to you how
22 200 feet was calculated?

23 A No.

24 Q Have you ever asked anybody to explain what the FAA
25 requires at that level?

1 A No.

2 Q You just know 200 feet is the magic number and
3 something happens with the FAA?

4 A Yes.

5 Q Okay. And is it fair to say, Ms. Frates, you
6 personally have never asked anybody to do any research or
7 done any research yourself to get any specificity of what
8 happens at 200 feet. True?

9 A At -- over 200 feet and over? Yes, that's true.

10 Q Okay. Now, is it over 200 feet or 200 feet and
11 over?

12 A My understanding is at 200 feet and over.

13 Q Okay. All right. And we now have obtained from you
14 your full knowledge, relative to this issue with the FAA?

15 A Yes, I believe so.

16 Q All right. Now, in just life, you're -- have you
17 ever heard of the term "obstruction light" on a tower?

18 A Before 2008, or just generally?

19 Q Just right now. Have you ever heard of that term?

20 A Yes, I have heard that term.

21 Q What does it mean to you?

22 A It's those blinking lights that they put on top of
23 buildings and towers and things.

24 Q Okay. And what -- before Mr. Allen was killed, what
25 was your understanding of the purpose of an obstruction

1 light on a tower or building or something of that nature?

2 A To increase visibility.

3 Q Okay. For whom?

4 A For people who might be in the air, obviously; for
5 airplanes and --

6 Q Helicopters, things like that?

7 A Yeah. Yes.

8 Q Okay. And I take it before you went to work for RRG
9 you have seen these blinking red lights just in some
10 aspect of your life. True?

11 A Yes.

12 Q Okay. And it would then be fair to say,
13 Ms. Frates -- again, just -- I mean, you're obviously a
14 well-educated person. And just common sense has indicated
15 to you the purpose of these flashing lights is to
16 provide -- to make the object it's on more visible to an
17 aviator. Fair?

18 A That's fair.

19 Q Okay. And in terms of the requirements, relative to
20 an obstruction light, if there are any, relative to when
21 you need to put them on some type of structure, do you
22 know when that happens?

23 A No.

24 Q Okay. Have you ever done any research, you
25 personally -- clearly, you know how to use the internet

1 and do research. Right?

2 A Yes.

3 Q Okay. Have you ever personally done any research to
4 find out when obstruction lights on structures are
5 required by any agency?

6 A No.

7 Q Have you ever directed anybody to do that kind of
8 research for you?

9 A No.

10 Q All right. Now, I'm going to go through some names
11 with you, and I'm going to ask you if you know who they
12 are and what is your relationship with those people.

13 Okay?

14 A Yes, sir.

15 Q First of all, do you know the entity -- or the
16 entities and individuals -- do you know the entity Delta
17 Wetlands Properties?

18 A Yes.

19 Q Okay. What is Delta Wetlands Properties? And what
20 I'm going to do for you here, Ms. Frates, is I'd like to
21 get your state of knowledge as of January of 2011.

22 A Okay.

23 Q Not something you've acquired since.

24 Does that make sense?

25 A Yes.

1 Q All right. So every question I'm going to give from
2 this point until I tell you something different is going
3 to be as of that time frame, January of 2011.

4 You became aware of Mr. Allen's death. Right?

5 A Yes, sir.

6 Q It involved a tower that your company had been
7 involved in having erected. True?

8 A Yes, sir.

9 Q It was involved in a project that RRG was involved
10 in. Correct?

11 A Yes.

12 Q And I'm going to guess, Ms. Frates, that you've
13 never been involved in anything that resulted in someone
14 dying. True?

15 A That's correct.

16 Q So just being a human being, this was very upsetting
17 to you. True?

18 A Yes.

19 Q I'm not putting words in your mouth --

20 A No.

21 Q -- that's how you felt. Right?

22 A Yes.

23 Q And when you first found out about it, you were
24 deeply upset as a person that someone had died.

25 A Yes.

1 Q In something that was dealing with a project you
2 were involved with.

3 A Yes.

4 Q All right. And you first found out about it how?

5 A There was an e-mail that I was copied on --

6 Q Okay.

7 A -- that said that the accident had occurred.

8 Q Okay. All right. So that's my framework of time.

9 Okay? So I want your knowledge before that.

10 Delta Wetlands Properties; what did you understand
11 that to be?

12 A The owners of the island on which the Delta Wetlands
13 Project was being developed.

14 Q Okay. And was RRG involved with the Delta Wetlands
15 Properties?

16 A As of 2008, I wouldn't have known in what capacity,
17 but RRG was involved in developing the Delta Wetlands
18 Project.

19 Q And did you have any involvement with Delta
20 Wetlands?

21 A Directly?

22 Q Yes.

23 A No.

24 Q So you knew your company that you were employed in
25 was involved?

1 A Yes.

2 Q All right. And who, within RRG, was involved with
3 Delta Wetlands?

4 A The main point of contacts were Cole Frates and Jim
5 James.

6 Q All right. So let's talk about that.

7 Cole Frates is your brother?

8 A Yes.

9 Q Younger or older?

10 A Younger.

11 Q And is he the one that brought you onboard for RRG?

12 A He and Ari Swiller, yes.

13 Q All right. And Mr. Swiller is whom?

14 A Mr. Swiller is -- he co-founded RRG with Cole
15 Frates; and he's my boss.

16 Q Okay. Is Mr. Swiller the person you answer to
17 today?

18 A I answer to both Cole and Ari.

19 Q Okay. So you -- and has that been the case
20 throughout your tenure with RRG?

21 A Yes.

22 Q And in terms of bringing you onboard, this happened
23 in 2003?

24 A Yes.

25 Q Who brought up the topic of you joining RRG?

1 A I don't remember exactly, but it -- that would have
2 been -- obviously, it was my brother, Cole.

3 Q And why did -- what was your understanding of why he
4 thought it'd be good to get someone with a doctorate in
5 history and your background, involved with RRG?

6 A Well, I was trans- -- I was leaving academia, I did
7 not want to stay in academia. And Cole and Ari were
8 starting this company, and we talked about, you know, what
9 they were doing and the kind of organizational skills they
10 needed. And we thought I might be a good fit.

11 Q To bring some organizational structure and
12 management of personnel?

13 A Not personnel, but more project management and
14 project -- like I said, sort of -- I don't know what you
15 call it. Structuring, I guess.

16 Q Did you have a skill on assessing who people were,
17 what they're capable of doing and assigning them?

18 A I had a skill in researching, and sort of taking
19 complicated sets of information and parsing through it and
20 finding the relevant details. And that was the
21 transferrable skill.

22 Q Were you going to be responsible for determining who
23 was going to do what on different projects?

24 A I was responsible for doing the research, not
25 necessarily for making the final call.

1 Q Okay. Cole clearly understood that you had no
2 specific background in -- or expertise in the renewable
3 energy industry. True?

4 A Yes.

5 Q Now, the purpose of RRG was to do what, as you
6 understood it when you started?

7 A It's evolved over time. But originally, we spun out
8 of Western Development and Storage, WDS, which was focused
9 primarily on water. And in doing water projects, WDS saw
10 opportunities to do agricultural and energy. And so
11 Renewable Resources Group was an expansion of WDS, to sort
12 of involve energy and agriculture with the already
13 existing water company.

14 Q And was this going to be a for-profit company?

15 A Yes, sir.

16 Q And the model that your brother and Mr. Swiller had
17 come up with was what?

18 A Essentially, it took a little time to figure out and
19 develop. But the idea was primarily to take land and
20 develop it for its highest and best use, focusing on
21 sustainability. So -- with the primary focus on water and
22 ag, and developing the energy upside where some existed.
23 Renewable energy, not conventional.

24 Q And how were you going to get the money to purchase
25 the land to do these sort of things?

1 A We have outside investors or we partner with other
2 people who have the money and the desire to be involved in
3 these kinds of projects.

4 Q So this was the business plan that your brother and
5 Mr. Swiller came up with. True?

6 A Yes.

7 Q So, essentially, locate projects that had the
8 potential to achieve the goals you just described; find
9 investors to put money into the project, and develop it as
10 a business?

11 A Yes, sir.

12 Q Okay. And basically focusing on green type of
13 energy?

14 A Yes.

15 Q Okay. So it fit politically, and finding investors
16 that your brother and Mr. Swiller knew that would be
17 interested in getting into that type of investment?

18 A Yes.

19 Q Okay. All right. Now, back to Delta Wetlands.

20 At some point in time, did Delta Wetlands retain RRG
21 to be involved in their water storage operation?

22 A Yes.

23 Q And who was, from your understanding, the point of
24 contact for Delta Wetlands with RRG?

25 A Cole Frates and Jim James.

1 Q Okay. And Jim James, was he a principal in the
2 business?

3 A Yes.

4 Q Okay. And did he have equal standing, so to speak,
5 with your brother?

6 A No. My brother and Ari are the bosses, essentially.

7 Q Okay. So would Mr. James then be in kind of the
8 same position that you are, relative to they're the
9 bosses, but you're given -- Mr. James would be given
10 assignments to go do?

11 A Yes.

12 Q All right. And did you know Mr. James before you
13 started in 2003?

14 A No.

15 Q And did you meet him shortly thereafter?

16 A Yes. He was a consultant on the AV water bank and
17 he --

18 THE REPORTER: AV?

19 THE WITNESS: Antelope Valley.

20 MR. DREYER: AV.

21 THE WITNESS: And then he became an employee of RRG.
22 I don't know when.

23 Q BY MR. DREYER: Okay. If Sherree asks you a
24 question, she just wants you to repeat what you just said
25 so that she gets it.

1 A Okay. I'm sorry.

2 Q No, don't apologize. This is your first time
3 through, so don't worry about it. Okay? Just -- I'm just
4 letting you know that's why she's asking.

5 A Okay.

6 Q And she asks it very firmly and very quickly because
7 she doesn't have time to mess around --

8 A Okay.

9 Q -- and think about it. Okay.

10 So was he there in that consulting capacity at the
11 time you first came onboard?

12 A I believe so.

13 Q At some point in time, did his status change from
14 consultant to employee?

15 A Yes.

16 Q And that would have been a decision that your
17 brother and Mr. Swiller would have made?

18 A Yes.

19 Q Were you involved in that decisionmaking process?

20 A I was not.

21 Q And did he -- I understand, I've heard this very --
22 a number of times from people other than Mr. Stringer: No
23 one has titles. But what was his role, if you will?

24 A His role? So Jim has a background in environmental
25 permitting and developing projects. He had worked for a

1 number of large consulting companies; and he was working
2 for a consulting company that we had hired on the Antelope
3 Valley Water Bank. And then, obviously, we developed a
4 relationship with him and brought him in.

5 So his primary role was in kind of managing large
6 permitting projects, the environmental aspects, and the,
7 sort of, land use aspects of projects.

8 Q So as you understood it, he had expertise in dealing
9 with public entities on getting permits?

10 A Yes.

11 Q Going through the construction process and getting
12 applications filled out and approved?

13 A Yes.

14 Q And he brought onboard his experience in that regard
15 to RRG?

16 A Yes.

17 Q Okay. Now, did you ever end up, during your career
18 with RRG, having any involvement with Delta Wetlands or
19 any representative of Delta Wetlands?

20 A I've met some of the people involved with it. But
21 no, never directly. It always generally went through Cole
22 and Jim.

23 Q Okay. So you've met Rick Stephens, I take it?

24 A Yes, sir.

25 Q Who do you understand Mr. Stephens to be as it

1 relates to Delta Wetlands?

2 A I actually don't know exactly. I believe
3 Mr. Stephens has a small company, as well; and it somehow
4 works on the Delta Wetlands Project.

5 Q Okay. Do you understand his involvement with any
6 investment group?

7 A Well, I know he is connected with Zurich Insurance
8 Company.

9 Q Okay. So that's not the small company you were
10 talking about?

11 A Well, he has his own small company that then work
12 for Zurich.

13 Q Okay. And have you ever had any conversations with
14 Mr. Stephens as to the specifics of the Delta Wetlands
15 property?

16 A Before 2008, or since?

17 Q At any time before Mr. Allen was killed.

18 A Before Mr. Allen was killed? No, I don't think I
19 had met Mr. Stephens before Mr. Allen was killed.

20 Q All right. Had you ever met anybody associated with
21 Delta Wetlands before Mr. Allen was killed?

22 A When -- I once went to the islands and -- before
23 Mr. Allen was killed, and I met the gentleman who runs the
24 farming operation out there.

25 Q And do you remember his name?

1 A Winther.

2 Q John Winther; an older gentleman?

3 A Yes.

4 Q Okay. And what did you understand Mr. Winther's
5 role or operation was?

6 A I'm understanding he was a farmer out on the island.

7 Q Okay. Do you know what island?

8 A The two islands we went to were Bouldin and Webb. I
9 believe I met him on Bouldin Island.

10 Q And the one time you went there you say on the
11 islands, you're talking about Bouldin Island and Webb
12 Tract?

13 A Yes.

14 Q Okay. And when was that?

15 A It was before the -- it was when we were with Jim
16 James, Rich Simon, I believe Doug Boxer and myself, went
17 to look at the island to determine if it would be a good
18 place to put the meteorological towers.

19 Q Okay. And do you remember when that was?

20 A I believe it's sometime in 2007, 2008. I'm sorry, I
21 don't remember.

22 Q That's fine. That's a great example of just giving
23 me your best estimate. Okay?

24 A Okay.

25 Q Now, who was in charge of this visit, if anybody?

1 Was there a designated kind of leader on this project?

2 A It was probably Jim James and myself. I was sort of
3 in charge of rounding up Rich Simon. And Jim had the
4 relationship with the people in Delta Wetlands. So he
5 arranged the actual visit himself.

6 Q Okay. So he did the logistics?

7 A Yes, sir.

8 Q Simon was the consultant?

9 A Yes. And I was in charge of getting Rich to come
10 with us and manage the trip.

11 Q And what was Mr. Simon's role?

12 A So he is a meteorologist and he works on wind
13 projects; and his role was to help us to determine if
14 there was a possible -- possibility that there might -- it
15 might be worth exploring a wind project in the Delta
16 Wetlands.

17 (Ms. Fischer entered the deposition.)

18 MR. DREYER: Okay. This is Kelsey Fischer, she's an
19 attorney at my office.

20 THE WITNESS: Nice meeting you.

21 MR. DREYER: This is Lloys Frates and this is Cole
22 Frates, just so you know who the parties are.

23 Q Now, who were you looking to, to kind of, check the
24 box, these will be good spots to put up met towers?

25 A Rich Simon.

1 Q Now, had you ever been involved in the installation
2 of a met tower construction, and theorizing anything,
3 relative to a met tower, before this occasion?

4 A The only involvement with met towers is when we
5 bought the Onyx Ranch, there were preexisting met towers
6 on it. But not in the construction of met towers.

7 Q Okay. And those met towers -- did you actually go
8 to Onyx Ranch?

9 A Yes, sir.

10 Q Okay. You made the trip up?

11 A Yes.

12 Q And did you actually see the met towers?

13 A I'm not sure I've seen every one of them, but I saw
14 at least more than one of them.

15 Q And did you also see -- don't they have at some
16 point in time wind turbines on that ranch?

17 A At that time, there were no wind turbines on that
18 ranch, but the adjacent ranch has one turbine.

19 Q All right. You saw those?

20 A Yes.

21 Q And when you saw the wind turbines, did you see the
22 obstruction lights on them?

23 A Yes. But they're quite tall.

24 Q Understood. Do you know how tall they are?

25 A I don't know. But they're 4- or 500 feet, I

1 believe.

2 Q Okay. All right. But you saw the obstruction
3 lights?

4 A Yes, sir.

5 Q Okay. And that's the flashing red light?

6 A Yes, sir.

7 Q Okay. Now, the met towers that you saw on the Onyx
8 Ranch. Understanding you weren't involved in
9 construction, do you know how tall they were?

10 A I do not know.

11 Q Have you ever asked anybody?

12 A I don't remember asking anyone. I'm sure we have
13 documents that say how tall they are, but I don't
14 remember.

15 Q Okay. As you sit here today, do you know -- do you
16 have an estimate of the height of these met towers?

17 A I really don't know.

18 Q Okay. Now, you indicated these wind turbines were
19 4- to 500 feet. That's obviously an estimate. Right?

20 A Yes, sir.

21 Q Okay. Can you give me an estimate as to how tall
22 the met towers were?

23 A It's difficult to say, because in Onyx, they're in a
24 mountainous environment, and so they're on mountains.

25 Over a hundred feet, I would say.

1 Q Okay.

2 A I don't -- beyond that, I don't know.

3 Q Did they have obstruction lights on them?

4 A Not that I remember.

5 Q All right. Were they -- what color were they?

6 A Just metal; silver. They're pretty weathered.

7 Q Okay. And they are -- the ones you saw on Onyx are
8 all located in the mountainous area?

9 A Yes. There's grazing there, but no agriculture, no.

10 Q Okay. But in terms of the topography of the land,
11 it's --

12 A It's mountainous; it's the Tehachapi Mountains.

13 Q Okay. And anything growing, any agricultural in
14 terms of farming, planting, seeding, anything like that,
15 in the area of those met towers?

16 A Not in the immediate area, no.

17 Q Okay. Now, this trip with these gentlemen in '07,
18 '08 was specifically to evaluate location, generally
19 speaking, for met towers, to determine whether it would be
20 an appropriate spot to evaluate for wind energy?

21 A I would say it was even slightly more basic than
22 that, to just see if it seemed like it would be a good
23 area to explore for wind. And if so, then moving on
24 towards the met towers, yes.

25 Q Okay. Now, did someone give you this assignment in

1 2007, 2008?

2 A I was in charge of the assignment. Whether it was
3 given to me or whether I was part of developing the idea,
4 I don't remember.

5 Q Okay. Well, by this time, RRG had been retained as
6 an agent by Delta Wetlands to be responsible for running
7 the water storage project?

8 A Yes, sir.

9 Q Okay. And the person in charge of the water storage
10 was your brother?

11 A Ultimately, yes.

12 Q Okay. My understanding -- have you read
13 Mr. Swiller's deposition?

14 A Yes.

15 Q Okay. So you understand how he characterized his
16 role, relative to RRG. Correct?

17 A Yes.

18 Q Was there -- and have you read anybody other than
19 Mr. Swiller's deposition?

20 A No.

21 Q Okay. Now, as of this time, 2007, 2008, you
22 recognized that your brother was the guy in charge, so to
23 speak, of RRG's responsibilities, relative to Delta
24 Wetlands?

25 A Yes.

1 Q Okay. And this was all before you went up there in
2 2007, 2008?

3 A Yes, sir.

4 Q So someone at some point in time had to make the
5 decision, "Are we going to look at wind-to-energy on this
6 location?" Correct?

7 A Yes.

8 Q Were you involved in that decisionmaking process?

9 A Yes.

10 Q Okay. Is this something that you and your brother
11 sat and talked about?

12 A I don't have a specific recollection of a
13 conversation, but I'm sure we talked about it, yes.

14 Q Okay. And I'm just wondering how it came to be that
15 you folks were going to look at harvesting wind at this
16 location. What's your recollection?

17 A My recollection is that the -- sorry. Webb Tract
18 and Bouldin Island, there's a lot of wind activity up
19 there. There's other islands with windmills on them. And
20 in the mountains and the hills there, there's also
21 windmills. And so it was a fairly obvious idea that
22 occurred to us that maybe these islands would have wind
23 potential, as well.

24 Q Okay. So you're already storing water, so the
25 thought was maybe a dual process of, "While we're doing

1 this water storage program, maybe we can develop wind as
2 well"?

3 A Yes, sir.

4 Q Okay. Had you ever been up to that area before you
5 came up in 2007?

6 A Not to the specific islands, just recreationally in
7 that area.

8 Q Okay. So how did you know that there was wind in
9 that area, in the Montezuma Hills, ranch and the windmills
10 in that area?

11 A I believe it was brought to my attention by Jim
12 James.

13 Q Okay. Do you think Mr. James is the guy who kind of
14 germinated this idea from the very beginning?

15 A It's hard to say. I mean, this is kind of how we
16 work, you know.

17 Q Okay.

18 A You sort of throw a lot of ideas against the wall
19 and see which ones seem to make the most sense.

20 Q Okay. Well, you know you're not -- at this point in
21 time, you're not an expert in wind energy. True?

22 A Yes, sir.

23 Q I mean, you know what it is and it could be a good
24 concept and it could make money, and things of that
25 nature, and it's green. But as far as expertise, that

1 wasn't your deal?

2 A No.

3 Q Nor your brother's?

4 A Not in the way you described, no.

5 Q Okay. And in fact, in RRG, as of 2007, there was
6 nobody that really had any experience in developing a wind
7 energy project for investors, and things of that nature.
8 True?

9 A That's not exactly true. Cole had worked on the
10 Pine Tree wind project.

11 Q Okay. Where is that?

12 A It's in the Tehachapi's adjacent to the Onyx Ranch,
13 which is how we originally became aware of the Onyx Ranch.

14 Q So of everybody within RRG, the person that had the
15 most exposure, if you will, to the concept, that would be
16 your brother?

17 A My brother and, perhaps, Jim James. I don't know if
18 he had worked on wind before or not.

19 Q Okay. And I'm just looking for your state of mind.

20 A Right. Right.

21 Q And again, you can be wrong on your state of mind, I
22 just want to know what you were thinking.

23 Okay. So the concept is, "Let's see if we can
24 develop something," and the first step is bringing out a
25 consultant and evaluating it?

1 A Yes, sir.

2 Q Okay. Now, why is Boxer involved?

3 A Doug Boxer went along with us because we were also
4 exploring the possibility of sequestering carbon on the
5 islands. So it was another idea for environmental
6 benefit. And he was in charge of the carbon piece. So he
7 just came along for the tour of the islands and to sort of
8 see what was going on.

9 Q Did he ever have any involvement in the actual
10 wind-to-energy project?

11 A No.

12 Q Now, that trip up in 2007, 2008, did you ever return
13 to that location after that one visit?

14 A I did not.

15 Q Okay. So as far as Lloyds Frates is concerned,
16 you've never physically been back to that location
17 certainly before Mr. Allen was killed.

18 A That's correct.

19 Q So the result of this visit was: Let's go to the
20 next step of getting met towers at these two -- on these
21 two locations and see what we get in terms of information.

22 A Yes. So Richard Simon reported to us that he
23 thought there was a good possibility that there would be a
24 wind resource there. And he suggested that we put met
25 towers up and where we put them. He also suggested we put

1 one on Chipps Island, which we eventually ruled out as not
2 a possibility because there's some habitat restrictions on
3 that island.

4 Q Meaning, that even if there's good wind, putting up
5 towers where there's ducks, and things of that nature
6 flying around, would potentially eliminate the potential?

7 A I think it's more that not the tower itself, but
8 individual wind projects would not be -- it would not be
9 viable on that island.

10 Q Okay. Did you do -- when Mr. Simon said: Yeah,
11 these would be two good locations to put met towers to
12 evaluate wind, did anybody start doing the research to
13 determine if you could get energy and you could put
14 turbines out there, where you would transfer the energy
15 to?

16 A Yes. We did an initial transition study. We hired
17 Power Engineers. We -- again, we relied on an engineering
18 firm to do the work for us.

19 Q That's Power Engineers?

20 A Yes.

21 Q Who was the liaison with Power Engineers?

22 A His name is Jim Jensen, J-E-N-S-E-N.

23 Q And who within RRG dealt with Mr. Jensen?

24 A I would have been the primary point of contact.

25 Q And e-mail communications between the two of you

1 about transmission possibilities?

2 A Yes. We had them look at a number of sites,
3 including the one on Delta Wetlands. And they did a
4 report. I don't know the exact dates.

5 Q Okay. So at some point in time, you did get a
6 report from Power Engineers?

7 A Yes, sir.

8 Q And was that before Mr. Allen was killed or after?

9 A Uh - it would have been before.

10 Q And what was the report's conclusion, relative to
11 transmission of energy?

12 A So we had a preliminary report saying that there
13 were ways to get the transmission out. Some of those
14 lines were heavily used. So -- which means that you might
15 have to build new lines. But, essentially, the existing
16 infrastructure there, you can piggyback on.

17 Q Okay. And you say that's a preliminary report. Was
18 there a more detailed report ever done?

19 A We were in the process of getting one done at the
20 time of the accident.

21 Q Okay. And you folks ultimately shut down the
22 wind-to-energy effort?

23 A We did not shut it down; Delta Wetlands told us to
24 shut it down.

25 Q Okay.

1 A We were instructed by the owners to shut it down.

2 Q Who at the Delta Wetlands told you to shut it down?

3 A I do not know.

4 Q Who would have been the person that RRG would have
5 gotten that instruction from Delta Wetlands?

6 A I don't know exactly who got it. I assume it would
7 have been Cole or Jim James.

8 Q Your brother never told you who told him?

9 A He did not.

10 Q Okay. Have you ever heard the name Dave Forkel?

11 A Yes.

12 Q Who is Dave Forkel?

13 A I'm not exactly sure. My understanding is that he
14 works with Rick Stephens.

15 Q Okay. Has anyone ever introduced you to Mr. Forkel?

16 A I don't think I I've met him in person. We had some
17 e-mail contact when we were working on this met tower
18 because I had to get permissions and deeds, and things
19 like signatures and things.

20 Q Okay. Was he your contact person with Delta
21 Wetlands?

22 A He was RRG's contact person. He primarily -- Cole
23 was the primary contact. So I would go to Cole, Cole
24 would go to Dave Forkel. I believe there were some direct
25 contacts between Forkel and myself, just getting documents

1 and things.

2 Q Okay. Do you know what his title was with Delta
3 Wetlands?

4 A Again, I do not. I still do not.

5 Q Did you ever talk to him on the phone?

6 A Not that I remember.

7 Q When you came up in '07, '08, did you ever meet him?

8 A Not that I remember.

9 Q All right. And how did you gain access to Webb
10 Tract?

11 A Jim James organized it. So we went on a ferry.

12 Q Okay. Did you meet anybody on the ferry?

13 A There were other people on the ferry, I don't
14 remember meeting anyone, specifically.

15 Q Okay. Did you see anybody on Webb Tract other than
16 the four of you, James, Boxer, Simon and yourself?

17 A And the people at the ferry landing.

18 Q I mean, actually, when you went out to Webb Tract to
19 look at the location for the tower.

20 A I know that when we met people, it was on Bouldin.
21 I don't remember meeting anyone on Webb.

22 Q Okay. Have you ever heard -- did you ever meet
23 Mr. Winther?

24 A I believe I met him on Bouldin Island.

25 Q Okay. On this trip?

1 A Yes.

2 Q Did he introduce you to Mr. Barajas?

3 A I'm not -- I'm not familiar with that name.

4 Q Okay. Have you ever met anybody named Jaime
5 Barajas?

6 A Not that I'm aware of.

7 Q Have you ever heard of an entity called Bouldin
8 Farming?

9 A Before the accident happened, no, I had not.

10 Q All right. Did you ever have e-mail communications
11 with Mr. Winther?

12 A Not that I'm aware of.

13 Q Did you ever have any e-mail correspondence with
14 Mr. Winther or a representative of Bouldin Farming, that
15 you now know as Bouldin Farming, concerning the effort
16 relative to the met towers?

17 A Not that I'm aware of.

18 Q Did you -- in your work on this project before
19 Mr. Allen was killed, Ms. Frates, did you ever try to
20 reach out to anybody where you specifically said in your
21 mind, "I need to deal with the farmers on Bouldin Island
22 and Webb Tract to find out what they're doing"?

23 A No.

24 Q Did you -- you say you're an expert in doing
25 research. Did you ever do any research as to what was

1 specifically happening on these two islands that you were
2 going to place a met tower on?

3 A I -- well, when we went out on the site visit, I was
4 aware, you know, generally what was happening on the
5 island.

6 Q Okay. Well, you're not a farmer. Right?

7 A I'm not a farmer.

8 Q My question to you is: Did you do any research --
9 other than visually walking on these pieces of dirt, did
10 you do any research to determine specifically what was the
11 use of the property?

12 A No.

13 Q Is there any reason why you didn't?

14 A I sort of generally thought I knew what the use of
15 the property was from --

16 Q What did you --

17 A -- the descriptions we had in the site visit.

18 Q What did you think it was?

19 A It was being developed for a water project. And in
20 the interim, it was being -- part of the property was
21 being farmed.

22 Q Okay. The part you were putting the towers on?

23 A Well, not exactly, no. On where the towers are was
24 not being cultivated. It was near where it was being
25 farmed, but the farming was further inland. Towers are on

1 the edge of the island, in an area that wasn't being
2 farmed. We weren't in the middle of a field.

3 Q Did you ask anybody whether -- what the intention
4 was to use the area where the towers were being installed?

5 A My understanding was that that area was --
6 essentially, there was nothing being done on it at the
7 time.

8 Q Who told you that?

9 A Jim -- the actual area of the towers?

10 Q Yeah.

11 A I went and saw it; and so there was no farming on
12 that area.

13 Q Okay. Well, we've already established you're not a
14 farmer. I'm asking you, you said "my understanding." Is
15 your understanding based upon your vision?

16 A Well, and also the fact that if one were to put a
17 tower in, obviously, one couldn't farm it. So we had to
18 decide that this area was free for this purpose.

19 Q Okay. And you realize that you couldn't farm or do
20 any agricultural work where the towers were. True?

21 A Yes, sir.

22 Q Okay. Did you communicate that to anybody?

23 A Anyone outside of RRG's team?

24 Q Yeah.

25 A No. I mean, it seemed obvious to me.

1 Q Okay. It may have seemed obvious. You know now
2 that Mr. Allen went out there to fly this location for
3 seeding and agricultural purposes. Right? And I don't
4 want to know anything that you've heard from your
5 attorney.

6 A Yeah, yeah, yeah. I know that now, yes.

7 Q Okay.

8 MR. DONAHUE: When you say "this location," it's
9 argumentative. And it's also -- when you say "this
10 location," it's vague and ambiguous. Are you talking
11 about the exact location of the tower, he was going to
12 seed that?

13 MR. DREYER: I'm talking about the exact location of
14 the tower where the -- where Mr. Allen was killed.

15 MR. DONAHUE: Okay. Anything he's asking about
16 which you know now that you learned from me or
17 Mr. Stringer is off limits because that's privileged.

18 Q BY MR. DREYER: Ms. Frates, is it -- are you
19 married?

20 A I am not.

21 Q Okay. Ms. Frates, in terms of -- I want to just
22 follow up on some of the things you've said, your
23 understanding.

24 Who was your source of information relative to the
25 use of the area where you understood the tower -- the met

1 tower was going to be installed on Webb Tract?

2 A It would have been primarily Jim James.

3 Q Okay. When you say "primarily," that leads me to
4 believe there might have been someone else.

5 A I might have gotten information from Cole, as well.

6 Q Okay. So those would be the sole source of
7 information, relative to what's going on on that island?

8 A Yes, sir.

9 Q Okay. Did you ever ask for anybody's contact
10 information who actually had the lease for farming on Webb
11 Tract?

12 A No.

13 Q Did you ever do anything, in your capacity with RRG,
14 to evaluate whether the portion of Webb Tract where the
15 met tower was going to be installed, to determine what was
16 going to be the future use of that location?

17 A No.

18 Q Do you know what RRG represented to the public
19 entity, Contra Costa County, was the use of this area
20 where the tower was going to be installed?

21 A I do know; and we said that it was in an
22 agricultural area.

23 Q Okay. And specifically, was a reference made to
24 using this area for farming of corn, do you know?

25 A I don't think it was specific to corn.

1 Q Okay. Do you know that it was specific to there's
2 farming going on?

3 A Yes.

4 Q All right. Do you know what representations were
5 made to the public entity as to how high the tower was?

6 A Yes. We took the specs from NRG materials and
7 provided them to the County.

8 Q Okay. And who's "we"? Who took the specs and put
9 it in the application?

10 A Well, we hired consultants to help us compile the
11 application. I worked with them and Jim James worked with
12 them, and Mike Kaschak. I believe when we actually went
13 to the County, it was Jim James who appeared on our
14 behalf.

15 Q The information that was in the application, who put
16 that in the application?

17 A There was, I mean, more than one of us, but I was
18 one of the people who helped do that.

19 Q Okay. Was there a representation made that it was
20 going to be under 200 feet?

21 A I believe the specs said that it was 187 feet, the
22 tower.

23 Q Okay. Do you know if there was a specific
24 representation it's less than 200 feet and, therefore, FAA
25 requirements do not apply?

1 A I read that document. That's one of the documents
2 that was provided to me. And yes, it says that in the
3 document.

4 Q Did you know that -- were you involved at all in the
5 application process for San Joaquin and for Webb Tract?

6 A I did not actually submit the application or
7 communicate with the County directly, but I helped put
8 those materials together.

9 Q All right. You were part of the team that did that?

10 A Yes, sir.

11 Q That would be you, James, Kaschak. Who else?

12 A Kennedy/Jenks Consultants. We also used Jones &
13 Stokes after Kennedy/Jenks was not performing at the level
14 we thought they should.

15 Q Anybody else?

16 A Not that I'm aware of.

17 Q Did Cole have anything to do with the filling out of
18 the application?

19 A No.

20 Q He signed it, though. Right?

21 A Yes, sir, he signed. He and Ari are the owners,
22 they sign things like that.

23 Q In their capacity as principals?

24 A Yes, sir.

25 Q Okay.

1 MR. BRASCH: I'm sorry, can I interrupt for a
2 second? When we're saying application, what application
3 are we referring to? Just, again, there's a land use
4 application, construction.

5 MR. DREYER: You guys can -- you can ask whatever
6 questions you want when you have the opportunity to ask
7 your questions.

8 MR. BRASCH: Okay.

9 MR. DREYER: Thank you.

10 Q Now, Ms. Frates, when you went up there in '07, '08,
11 did you ask to meet with anybody who actually was involved
12 in the use -- the agricultural use of Webb Tract?

13 A I did not, no.

14 Q Did you ask to meet with anybody who's involved in
15 the agricultural use of Bouldin Island?

16 A No.

17 Q All right. Now, in terms of the actual process of
18 constructing the met towers at these two locations, did
19 you personally ever deal with Mr. Forkel?

20 A No, I think, other than to get some documents and
21 signatures from him.

22 Q All right. Now, did you have somebody within RRG
23 that you were using to assist you in this project?

24 A Within the RRG team, not the consultants?

25 Q Yes.

1 A So Jim James and Mike Kaschak worked on this project
2 with me.

3 Q Okay. Let's talk about Mike Kaschak.

4 Mr. Kaschak, when did he come to work for RRG?

5 A I believe it was 2008. It was shortly after we
6 purchased the Onyx Ranch or right about the same time.

7 Q Okay. And who hired him?

8 A Ari Swiller and Cole Frates.

9 Q And who recommended that he be hired?

10 A Ari Swiller and Cole Frates. We knew him from
11 working on End Oil, the nonprofit I mentioned earlier.

12 Q Okay. Is your brother involved with End Oil?

13 A Yes.

14 Q All right. And so the two of you got to know Mike?

15 A Everyone in our office got to know Mike, because End
16 Oil was originally housed in our office.

17 Q And as far as Mike coming onboard, did he approach
18 RRG or did you guys approach him? Do you remember?

19 A I honestly don't know.

20 Q Okay. At some point in time, did you become
21 responsible for supervising Mr. Kaschak?

22 A I'm not the only person who supervises him, but yes,
23 I was one of the people.

24 Q When he started, who was his supervisor?

25 A His direct supervisor would have been Ari. But I

1 worked with him on a number of projects and I was the sort
2 of layer between Ari and him.

3 Q All right. Other than you and Ari, would anyone
4 else have had the authority to direct Mr. Kaschak?

5 A Jim James, and Cole, obviously.

6 Q Okay. Anybody else?

7 A I don't believe he was working with any -- on any
8 other projects at the time.

9 Q Okay. Now, when you -- do you remember when he
10 started?

11 A I believe it was in the fall of 2008, but I'm not
12 certain of that.

13 Q And at some point in time, did he become involved in
14 the Onyx Ranch project?

15 A Yes.

16 Q Who put him on that job?

17 A Ari and Cole.

18 Q All right. And whose idea was it to put him on that
19 job, do you know?

20 A Ari and Cole.

21 Q All right. And who was responsible for the
22 day-to-day operations of the Onyx Ranch within RRG?

23 A In the beginning, it was me and Jim James, and then
24 Mike became the project manager.

25 Q So he replaced the two of you?

1 A Yeah. Generally, what happened is we sort of get
2 projects up and running. And then once they're sort of
3 humming a bit, we turn them over to project managers. And
4 essentially, we -- in my role, I kind of go to the next
5 project, get that up and running, go to the next one, get
6 it up and running.

7 Q What about -- were you involved in the decision to
8 make him the project manager for Onyx Ranch?

9 A I'm sure I was consulted, but it was not my ultimate
10 decision.

11 Q That would be your brother and Swiller?

12 A Yes, sir.

13 Q But you have had a voice in the decision, I take it?

14 A Yes.

15 Q What about Mr. Kaschak -- well, first of all,
16 describe Onyx Ranch. What was that project?

17 A Onyx Ranch, it was at the time a 68,000-acre ranch
18 in Kern County. About 3,000 acres of it are on the south
19 fork of the Kern River. They're being farmed.

20 It was primarily, for us, a water asset. But in
21 this huge piece of property, there is a great deal of
22 grazing. And it's a wind-resource area in the Tehachapi
23 Mountains. And so there was wind possibility on it.

24 We eventually bought the ranch with a financial
25 partner. And very shortly, one week after we bought it,

1 sold the bulk of the wind resource to a municipality
2 called the City of Vernon. And they went ahead and
3 developed it for wind. So we were primarily focused on
4 the water resource up by the river. But, you know, part
5 of the asset was this wind resource area.

6 Q Okay. And the financial partner was whom?

7 A It's called CIM. It's a group based out of Los
8 Angeles.

9 Q All right. And that's the investment arm that did
10 the purchase?

11 A Yes, sir.

12 Q And within RRG, was it your brother and Ari Swiller
13 that found and developed the project?

14 A I believe my brother first identified the project.
15 And then, you know, there's a whole team of people who
16 worked on this, but yes.

17 Q Okay. And at some point in time, it had to be
18 managed, the property itself. Correct?

19 A Yes, sir.

20 Q All right. And -- because you had ongoing tenants
21 that were leasing the land to do agricultural things --

22 A Yes.

23 Q -- and cattle ranch, and stuff like that?

24 A Yes.

25 Q All right. So somebody at RRG had to have the

1 responsibility of monitoring the day-to-day operations of
2 that aspect of the property?

3 A On that particular ranch, we hired a farming manager
4 that managed the ranch. So RRG was the, sort of, layer
5 above them. So we were not on the property day-to-day
6 managing it; we were managing the managers.

7 Q And, ultimately, Mr. Kaschak assumed that
8 responsibility?

9 A Yeah. With me and Ari working with him on it, yes.

10 Q All right. What about Mr. Kaschak you felt
11 warranted him being put in that position? What about his
12 background?

13 A He's a -- well, we knew him through End Oil, so we
14 had seen some of his work product. He's extremely bright.
15 You know, we liked him. We thought he would be good with
16 liaising with the -- with the managers. Obviously, he
17 learned a lot on the job. But, you know, we thought he
18 was capable enough to the -- up to the job.

19 Q He had no wind-energy experience. Right?

20 A No wind-energy experience that I'm aware of.

21 Q And no electrical experience relative to power.
22 True?

23 A No. Similar to me, he had, you know, an
24 environmental sort of advocacy background.

25 Q Okay. So it was more of just bright, young guy who

1 should be able to grow into the job of managing the
2 managers?

3 A I think that's a fair description.

4 Q Okay. Now, let's talk about PDC or Shah &
5 Associates.

6 Have you ever heard that term for that company?

7 A I only heard it after the accident.

8 Q Okay. And again, keeping in mind my barrier of time
9 is January of 2011.

10 A Okay.

11 Q Before that date, had you ever heard of that entity?

12 A I don't remember, no.

13 Q Okay. Were you involved at all in the negotiations
14 to retain them to be involved in the process --

15 A No.

16 Q -- of erecting towers?

17 A No.

18 Q You know now that they ultimately were involved.

19 Correct?

20 A Yes, sir.

21 Q All right. And do you know who made the decision to
22 bring them onboard to do the construction project?

23 A I have a little memory of that. We had hired one
24 met tower installer, Brent Scheibel. And essentially, he
25 became very unreliable. And he was recommended by Rich

1 Simon. And we went back to Rich Simon and asked him to
2 suggest other met tower installers. He suggested Adam
3 Smith.

4 I instructed Mike to ensure that Adam Smith was
5 qualified. Beyond that, I don't know how that
6 relationship evolved.

7 Q Okay. So was Mike -- Mike was now involved in this
8 project on Webb Tract and Bouldin Island?

9 A Yes.

10 Q Who made the decision to bring him onboard to do
11 that?

12 A It would have ultimately been Cole and Ari.

13 Q Okay.

14 A But I -- Jim James and I worked with him, and we're
15 the ones who had the most contact with him on this
16 project.

17 Q And I understand that it has to be signed off by
18 Cole and/or Ari. But was it your idea to bring Mike
19 onboard?

20 A I don't know if it was me or Jim. But at some
21 point, we decided that we needed help. And also, I was
22 moving into another deal, and so we needed more people
23 working on this project as I transitioned off.

24 Q Okay. When did you have -- and you meaning RRG --
25 have Mike come onboard on this effort for analyzing the

1 potential of wind up in the Delta Wetlands Properties?

2 A It was mostly after we had gotten the building
3 permit, I believe. And we brought him on to sort of work
4 on the installation of the actual towers.

5 Q Had you made contact with Adam Smith before or after
6 you got the building permit?

7 A I never made contact with him directly, and I don't
8 know when that contact was made.

9 Q All right. So was that something that Mike was
10 assigned the responsibility to determine who's qualified
11 and then make the decision to bring him onboard?

12 A I don't think Mike made the decision to bring him
13 onboard, but he did the research to determine he was
14 qualified.

15 Q Who made the decision to bring him onboard?

16 A I think it would have been, ultimately, Cole and
17 Ari. But Mike reported back to me and I suggested to Cole
18 and Ari that his credentials were such that he should be
19 brought on. And I remember we consulted Rich Simon about
20 him, as well.

21 Q Okay. Do you -- when Mr. Kaschak evaluated whether
22 Smith was qualified, did he inform you whether Mr. Smith
23 had a contractor's license?

24 A Not that I'm aware of.

25 Q Before Mr. Allen was killed, were you ever made

1 aware of whether or not Mr. Smith had a contractor's
2 license?

3 A Not that I'm aware of.

4 Q Not that you're aware of that you were made aware,
5 or -- my question is --

6 A No, I don't remember being told that in one way or
7 the other.

8 Q Okay. Thank you. Now, as far as getting the
9 information about Shah & Associates, doing business as
10 PDC. As of today, other than anything you've heard from
11 counsel, did you ever, within the RRG organization, find
12 out how it is that that entity became involved?

13 A I -- I did not know, yeah.

14 Q Clearly, Adam Smith, in terms of the name, came
15 before you ever heard anything about Shah & Associates?

16 A Yes. For me, it did.

17 Q Okay. Have you ever met with or talked to a
18 gentleman by the last name of Pueliu?

19 A No.

20 Q Something along that line.

21 Do you know what NRG was before Mr. Allen was
22 killed?

23 A NRG -- there's two NRGs. I assume you're talking
24 about the met tower one, not the energy company.

25 Q Yes.

1 A Yes. They manufacture met towers.

2 Q How did you become aware of them?

3 A Rich Simon suggested that we talk to them about
4 providing the met towers for this project.

5 Q And who talked with NRG within RRG?

6 A I believe I had one conversation with NRG. And I --
7 my recollection is it was primarily Mike Kaschak. But I
8 did have one preliminary conversation with them.

9 Q Was it verbal, e-mail? How was your communication?

10 A I believe it was verbal. I think they're on the
11 east coast, and I called them to talk to them about the
12 price and availability of the towers.

13 Q And who did you talk to?

14 A I have no idea.

15 Q Had you -- by that time, you'd been out at the
16 location. Correct?

17 A Yes, sir.

18 Q Now, going back to that assessment of the property.
19 Understanding you're not a farmer -- and you certainly
20 don't hold yourself out as an expert in farming. True?

21 A Yes.

22 Q You're looking at the ground; you're out there with
23 Boxer, James and Simon.

24 MR. DONAHUE: And Winther.

25 THE WITNESS: Well, he wasn't with us. We just met

1 him.

2 MR. DONAHUE: Oh, I'm sorry. That was Bouldin.

3 Sorry.

4 Q BY MR. DREYER: And again, I'm talking about Webb
5 Tract, when you're there. You know James is not a farmer.
6 Right?

7 A Yes.

8 Q You know that Boxer isn't a farmer.

9 A Yes.

10 Q And you know that Simon is not a farmer.

11 A Yes.

12 Q All right. Describe the land -- then did Simon tell
13 you, "This is where I want the" -- "I think the tower
14 should be"?

15 A Well, there was some collaborative effort between
16 Jim James and Simon to talk about where the towers could
17 possibly be. And then at that point, Simon said, you
18 know, this would be the optimal place because of where the
19 wind comes in that location, et cetera, et cetera.

20 Q Okay. And did -- who did you understand -- after
21 Simon said this would be the optimum place, who was going
22 to make the final determination as to the specific
23 location of the towers on these two pieces of land?

24 A Well, Rich Simon recommended the location and gave
25 us GPS coordinates for us. And then it went to Jim James

1 to talk to the owner to determine whether we could put it
2 up and where exactly we could put it up.

3 Q All right. So Simon, who you know is not a farmer,
4 gives you GPS coordinates, latitude, longitude, for
5 locations. Correct?

6 A Yes, sir.

7 Q All right. And then James takes that information
8 and he goes to Delta Wetlands and says, "This is where
9 we'd like to do it."

10 A Yes, sir.

11 Q Do you know who James talked to?

12 A I do not, no.

13 Q And did Mr. James relate to you that anybody
14 communicated to him there was a problem with locating the
15 towers at that location because of agricultural efforts?

16 A We did not have a conversation of that effect, no.

17 Q Did Mr. James ever report back to you anybody he did
18 talk to at Delta Wetlands?

19 A Not that I -- no, not that I remember.

20 Q Would you agree that you folks had to get approval
21 from Delta Wetlands as to the location of the towers?

22 A Yes, I would agree to that.

23 Q And would you agree that you folks, meaning RRG, had
24 no clue what was going to be the future use of these areas
25 where the towers are going to be located? Right?

1 A Yes.

2 Q So you're looking for information with Delta
3 Wetlands so they can communicate to you what is the use
4 and is this an okay place to put the towers.

5 A Yes.

6 MR. COLEMAN: Objection. Argumentative.

7 MR. DREYER: Yes?

8 Q BY MR. DONAHUE: You can answer.

9 A Okay. Yes, we had to get permission from the owner
10 to put the towers here.

11 Q If the owners said: Hey, we just checked with the
12 tenants of the property and this is an active area of
13 farming, we don't want the towers there; would that be
14 information that you folks would have considered relative
15 to locating the towers?

16 A Yes.

17 Q What would -- hypothetically, if that happened, if
18 someone told you that, "Hey, you can't do it there," what
19 would have been the next step?

20 A It would probably have been to go back to Rich Simon
21 and say, you know, "This area is not available to us.
22 These are the areas that are. Can we do it?"

23 Q Okay. And that would have been the ongoing
24 evaluation process?

25 A Yes, sir.

1 Q All right. And who, within RRG, that you would
2 identify as the person responsible for getting approval
3 from Delta Wetlands?

4 A Ultimately, it was my brother. I had to get the
5 permission to do it and to spend the money to do it.

6 Q All right. So he'd be relying upon you and
7 Mr. James making contact, or one of you making contact?

8 A I believe the way it went is that we gave my brother
9 the information he needed to convey it to the owner to get
10 the permission from the owner to come back to us to tell
11 us that it was okay to do.

12 Q So -- and your brother would have to get permission
13 relative to the location, one aspect. Right?

14 A Yes.

15 Q And the budgeting of money that Delta Wetlands would
16 put into the effort to construct the towers.

17 A Yes, sir.

18 Q Because you knew that that was going to cost some
19 money. Correct?

20 A Yes, sir.

21 Q Did you have an understanding of how much it was
22 going to cost?

23 A Yes. In looking at the e-mails, we had a budget for
24 it.

25 Q Okay. What was -- who set the budget?

1 A I believe we pieced it together based on, you know,
2 talking to the various consultants and vendors.

3 Q Okay. So this would have been talking to Simon,
4 Smith --

5 A NRG, et cetera.

6 Q NRG?

7 A Yes.

8 Q Okay. And that would have been Mr. Kaschak's
9 responsibility to gather the information as to cost?

10 A Preliminarily, I believe it was me. And then when
11 it got into the real details of putting it up, yes, it
12 would have been Mike Kaschak and Jim James.

13 Q Okay. So the progression would be you started it by
14 locating vendors, talking with Simon, getting names,
15 getting general ideas, and then you ask Kaschak.

16 Is that fair so far?

17 A Yes.

18 Q And then you asked Kaschak to kind of refine it and
19 get specific numbers so that the actual budget could be
20 set?

21 A Yes, that's fair.

22 Q And the person who was going to make the decision on
23 how much was necessary that was going to be submitted to
24 Delta Wetlands as the number was going to be whom?

25 A Jim James is the one who put the budgets together

1 for the Delta Wetlands Project; and then he works with
2 Cole to deliver it to the owner.

3 Q So James would get the number, go to Cole and say,
4 "This is what we're going to need," and then Cole would
5 communicate with whoever at Delta Wetlands and make a
6 decision.

7 A That is my understanding of how it works.

8 Q Okay. All right. And what did you understand to be
9 the budget for this project of developing two towers?

10 A In looking back at the documents, I believe it was
11 around \$70,000.

12 Q All right. And did you understand that Delta
13 Wetlands approved that?

14 A Yes.

15 Q Did you understand that Delta Wetlands also approved
16 the location of the towers?

17 A I understood that they didn't say we couldn't put
18 them there.

19 Q Okay. Well, that's different than saying you can
20 put them there. I don't know.

21 So my question to you -- with the way you answered
22 that question, let me ask you, Ms. Frates: Did you
23 understand that Delta Wetlands was told: These are the
24 locations we want to place these two towers.

25 A Yes.

1 Q And that Delta Wetlands didn't say anything to
2 indicate that they shouldn't be placed there?

3 A Yes.

4 Q Okay. And would that have come -- this information
5 getting back from Delta Wetlands to RRG, would that then
6 have come from your brother?

7 A Either through Cole or Jim James.

8 Q Okay. All right. Well, Cole would have to be the
9 liaison to get the permission --

10 A Yes, sir.

11 Q -- as you understood it. And then that would have
12 had to have been communicated back to RRG by your brother?

13 A Yes.

14 Q Okay. And then once the approval, going through
15 this chronology, was obtained from Delta Wetlands for
16 location and budget, is that then starting the process of
17 the application for building permits and things like that?

18 A Yes, sir. I mean, it could have slightly gone on
19 simultaneously, but they had to sign the permit, et
20 cetera.

21 Q Okay. So in anticipation that you were going to get
22 approval, the process of dealing with the two counties was
23 started, maybe?

24 A Yeah. Generally, what you do is you reach out to
25 the County and you find out what it's going to take to be

1 approved.

2 Q Okay.

3 A And then we probably would have gone to Delta
4 Wetlands to explain what the process was.

5 Q Did you understand there were two counties you were
6 involved with?

7 A Yes, sir.

8 Q And who was the person who was going to reach out to
9 the counties and get information about what was necessary?

10 A Jim James did that work.

11 Q Was Mike Kaschak involved at all?

12 A Not preliminarily, no, not at first. He became
13 involved later, but it was initially Jim.

14 Q Okay. And then in terms of the hierarchy of RRG,
15 did Jim have the ability to tell Michael what to do?

16 A Yes.

17 Q Did Michael have the ability to tell Jim what to do?

18 A Not really.

19 Q Okay. All right. Okay. Now, did you have anything
20 to do with the application process with the two respective
21 counties for the erection of the met towers?

22 A I helped gather information for the applications,
23 but Jim was the one who actually went to the hearings and
24 spoke with the County. We had consultants that we hired
25 to help us prepare those applications and also to liaise

1 with the County.

2 Q And the consultants were?

3 A In my memory, it was initially Kennedy/Jenks. And
4 then because of the work -- they just weren't paying a lot
5 of attention to us and we brought on Jones & Stokes.

6 Q And who was the liaison with Jones & Stokes?

7 A It would have been Jim James.

8 Q Do you know who Peter Braffman is?

9 A I do.

10 Q Who is Peter Braffman?

11 A Peter Braffman, he used to work for Zurich
12 Insurance.

13 Q Okay. And what, if any, involvement has he had with
14 RRG?

15 A He worked on the Delta Wetlands Project. So I
16 believe that RRG met him through Delta Wetlands. And then
17 later on, after he left Zurich, he helped us with some
18 fundraising efforts.

19 Q Okay. So getting investors to put money into the
20 project?

21 A He went to Credit Suisse, and Credit Suisse
22 considered investing in one of our projects. He never
23 did.

24 Q Okay. Was he affiliated with Credit Suisse?

25 A I believe he worked there after Zurich. He now

1 works for another organization.

2 Q Okay. Dave Dorrance, who's he?

3 A Dave Dorrance works for RRG.

4 Q And what role, if any, does he have with RRG?

5 A He is primarily the lead -- technical lead on our
6 water rights, water storage, water transfer projects.

7 Q So any e-mail reference to Mr. Dorrance that you see
8 or observed in this case would be not as to any specific
9 involvement in the wind-to-energy project. True?

10 A No, he was not involved. Only the water.

11 Q Nor was Mr. Boxer?

12 A No. Only the carbon.

13 Q Okay. So the -- and Mr. Stringer has nothing to do
14 with the actual wind-to-energy project, other than maybe
15 reviewing documents from a legal capacity?

16 A Correct.

17 Q Okay. He wasn't looked to for decisionmaking
18 process, I take it?

19 A On the wind project?

20 Q Yes.

21 A No.

22 Q Okay. Are you aware of whether Mr. Kaschak was also
23 assigned any other locations of duties other than the Onyx
24 Ranch and involvement with this wind-to-energy project?

25 A At this time, no, he was not.

1 Q Okay. At some point in time, did he get an
2 additional assignment?

3 A Yes, he did. We purchased a ranch out in Blythe and
4 he became the project manager of that ranch.

5 Q Okay. And when did he become the project manager of
6 that ranch? Ballpark is fine.

7 A We purchased Desert Sun Farms in 2011.

8 Q So after Mr. Allen's death?

9 A I believe so. I'm not exactly sure about the dates.

10 Q Now, in terms of the specifics of how you get data
11 from a met tower and interpret it, do you have any
12 expertise in that?

13 A No expertise, no. We relied on Rich Simon for that.

14 Q And in that regard, once the towers were up, the
15 data was going to be collected and Simon was going to get
16 the information?

17 A Yes. He collected the data, and then he put it into
18 a form that laypeople could read and transmitted it to us.

19 Q And that was the plan. True?

20 A Yes, sir.

21 Q He was the one that was going to do the assessment
22 and then make his analysis known to RRG?

23 A Yes, sir.

24 Q And then RRG would take that information with the
25 information from Mr. Simon and then ultimately talk to

1 DWP?

2 A DWP?

3 Q Delta Wetlands Project.

4 A Oh, sorry. I was thinking the Department of Water
5 and Power. Yes.

6 Q Okay. All right. Now, I just want to get the
7 hierarchy before we get into specific documents.

8 A Yes.

9 Q At some point in time, the decision was made: Okay.
10 You've got the permission to locate the towers. We'll pay
11 for the towers, and we'll start this project to assess
12 whether this is going to be a viable enterprise.

13 A Yes, sir.

14 Q And within RRG, what was the hierarchy -- after
15 these towers were going to be erected, who was going to be
16 the conduit of information, that is get the information
17 from Simon, and then start making some decisions?

18 A Well, Mike was the first line of contact with Rich
19 Simon, so he actually got the information. It was also
20 transmitted to me. And then the idea - you need a certain
21 amount of data to make the data set relevant - was to,
22 over time, collect the data and then see if it was worth
23 moving forward with the project or not.

24 Q Okay. Were you going to make that decision, based
25 upon what Simon told you?

1 A No, we weren't going to make the -- well, we would
2 make recommendations of the company; the owner would
3 ultimately make the decision.

4 Q Understood. But listen carefully to what I'm
5 asking. I understand the information is coming from Simon
6 to Mr. Kaschak and you. My question is who's going to say
7 within RRG: We should take this information to Delta
8 Wetlands and get approval or not"?

9 Who, within the company, RRG, was going to be making
10 that choice and decision?

11 A It would ultimately be Cole.

12 Q Okay. So when you got the information from Simon,
13 you and Kaschak, you would then communicate it to Cole to
14 evaluate it. True?

15 A I think it would be more we would evaluate it
16 internally as a team, make a recommendation to Cole, and
17 then Cole would take that to --

18 Q You and Mike would make that evaluation?

19 A Mike and Jim James and Cole and -- I mean, the RRG
20 team.

21 Q Okay. See, this is what I'm trying to find out.
22 Okay. I know you don't know anything about
23 wind-to-energy. Right?

24 A Right.

25 Q You know Kaschak doesn't know anything about

1 wind-to-energy.

2 A Right.

3 Q Okay.

4 A So we would be relying on the consultant to tell us
5 it was viable.

6 Q Okay. Well, the issue I'm trying to find out is:
7 Who, within RRG, would be making the decision: We should
8 go talk to Delta Wetlands or we shouldn't?

9 MR. DONAHUE: That's asked and answered. She's been
10 explaining that to you. All right?

11 MR. DREYER: Well, I guess I'm slow. I guess I'm
12 slow. I guess I'm slow.

13 Q Okay. Tell me again.

14 A So the person who would go to Delta Wetlands and say
15 we should move forward with the project, we recommend --

16 Q That's not my question.

17 A Okay. I'm sorry, I don't understand the question
18 then.

19 Q Yeah, that's -- then I'm going to rephrase it. See,
20 Jim has got us all off our track.

21 I want to know, within RRG, who is going to make the
22 decision: We are going to kill the project now, because
23 this information tells me it's not going to be viable; or,
24 it's good enough that I think we're going to go talk to
25 Delta Wetlands about whether she should go forward with

1 it"?

2 That's my question.

3 MR. DONAHUE: Your question assumes facts not in
4 evidence that they're going to make that decision.

5 MR. DREYER: I'm in discovery, I'm trying to figure
6 it out.

7 Q So tell me, who would make that decision, as far as
8 you understood?

9 A We generally make those kinds of decisions as a
10 team.

11 Q Okay. And the team would be?

12 A On this project, it would have been Mike Kaschak,
13 Jim James, myself and Cole Frates.

14 Q Okay. Now, did you ever have a meeting, this team,
15 where you sat down and evaluated the data from V-BAR? Was
16 it V-BAR or Sandbar that you were dealing with?

17 A He goes under both names, so I believe we dealt with
18 both.

19 Q Okay.

20 A So I don't know how he parses it up.

21 Q We'll talk to Simon.

22 A Okay. There was a time after we had received at
23 least a year's worth of data, where we discussed moving
24 forward with the project. And we determined there were
25 next steps we needed to do as far as research.

1 Q Okay. So we know the towers were built in April of
2 '09. Right?

3 A Yes, sir.

4 Q Does that sound right?

5 A That sounds right.

6 Q And you got data after April of '09. Correct?

7 A Yes.

8 Q Was it quarterly?

9 A I don't know if we received monthly or quarterly
10 reports.

11 Q All right. And do you know what the permit said,
12 relative to how long the tower was going to be up?

13 A I do not know.

14 Q Do you know what the County said, relative to how
15 long the tower could be up?

16 A I do not know. I did not know at the time, yeah.

17 Q Okay. It was an understanding it's a temporary
18 tower. True?

19 A Well, not necessarily. So the way met towers work
20 is you put them up, and if you decide to move forward with
21 the wind project, you leave them up.

22 So on a functioning wind project, it still has met
23 towers up, because you need more -- the more data, the
24 better.

25 Q Okay. And this is something you just learned over

1 time from talking to the consultants, I take it.

2 A Yes, sir.

3 Q Okay. Now, when is the first time you recall the
4 team, as you described it, you, Mike, Jim and Cole, got
5 together to discuss and analyze the data from Mr. Simon?

6 A We received a report after there had been a year's
7 worth of data, from Mr. Simon, that said the wind looked
8 promising. And we discussed moving to the next step which
9 is to research in more detail the ability to get the
10 transmission -- the power off the island before we decided
11 to move forward with a bigger project.

12 Q So the decision -- strike that.

13 So the actual meeting for the first time took place
14 after one year?

15 A Yes. Because before that, the data isn't relevant.

16 Q Okay. I didn't ask you that. I'm just asking you
17 timing.

18 A Okay.

19 Q And that means that there were a number of reports
20 that were generated first that came in to RRG. True?

21 A Yes.

22 Q But the first real meeting where you looked at it
23 together as a team was after the one year?

24 A Yes.

25 Q And the reason being because you felt, from your

1 consultants, that you need one year of data before you
2 could make any kind of assessment?

3 A Yes, sir.

4 Q Okay. And you understood Mr. Simon said it's,
5 quote/unquote, promising?

6 A Yes.

7 Q All right. And now, did you folks, when you had
8 this team meeting -- and when I call it the wind-to-energy
9 project, you know what we're talking about. Right?

10 A We're talking about the Delta Wetlands met towers,
11 yes.

12 Q Yeah. Okay. Did anybody keep notes of this meeting
13 when the four of you got together?

14 A I don't know.

15 Q Do you remember seeing anybody taking notes?

16 A No.

17 Q And was there a consensus at the time of this
18 meeting as to what to do?

19 A The consensus was that we should engage Power
20 Engineers to do a more detailed transmission study to
21 figure out if the transmission would be -- would be
22 viable.

23 Q Had you already done any kind of assessment through
24 Power Engineers before that?

25 A We had done a preliminary assessment.

1 Q Which is the one you told me about?

2 A Yes, sir.

3 Q All right. Who was your contact at Power
4 Engineering?

5 A His name is Jim Jensen, J-E-N-S-E-N.

6 Q Is he still with them, do you know?

7 A Yes, he is. He's moved offices, but he's with them.

8 Q Where are they located?

9 A Power Engineers is in Idaho, but Jim Jensen is now
10 in Irvine.

11 Q All right.

12 MR. DONAHUE: Can we take a break? We've been going
13 an hour and a half.

14 MR. DREYER: Sure. Sure. Absolutely.

15

16 (Break taken.)

17

18 MR. DREYER: Okay. Back on the record.

19 Q So, Ms. Frates, we were at April of 2010,
20 approximately, in terms of getting the information after
21 one year of data and the meeting -- the team meeting that
22 you folks had.

23 A decision was made to do, what, after you got the
24 first year of data from Mr. Simon?

25 A The decision was made to pursue the transmission.

1 So the idea was to figure out what it would really take
2 from a transmission point of view, if a wind project were
3 built, to be able to get the power off of the island and
4 into the grid system.

5 Q Okay. And who was assigned the task of dealing with
6 Power Engineers?

7 A At that time, I believe it was Mike Kaschak.

8 Q Okay. Did he ever report back to you information he
9 got from them?

10 A That effort was in process when the accident
11 occurred and it was never finished.

12 Q Okay. So when was this meeting then by the team?
13 Understanding you need a year of data, a year is April of
14 2010. How long after April 10 did you guys have this
15 meeting?

16 A Okay. So I want to clarify, it wasn't necessarily a
17 single meeting. Our process is a bit more organic than
18 that. It may have been like me talking to Jim, Jim
19 talking to Mike, Mike -- but at one point, we all
20 coalesced around this decision.

21 Q Okay. Which you've just told me about?

22 A Which would have been after we received a year's
23 worth of data. I don't know exactly what the timing was.

24 Q Okay. I'm not asking for exact, I'm asking your
25 best -- and I understand no one kept meeting notes, I

1 understand that. But the decision was made to go to this
2 next stage of finding out transmission information.

3 When was the decision made to do that next step?

4 A It was after we had received a year's worth of data.
5 It would have been within the months after that. A couple
6 of months --

7 Q So by June?

8 A -- would be the most accurate.

9 Q By June?

10 A June or July.

11 Q Okay. So that's --

12 A I would suspect.

13 Q It could have gone as long as three months?

14 A It could have. Because if my memory serves, the
15 final data was not delivered in April, it was delivered in
16 May.

17 Q Okay.

18 A And then that would have pushed it out, you know,
19 into the -- into the early summer.

20 Q Now, were you -- at any point in time, before the
21 decision was made to move forward, were you informed that
22 there was any problems with the data-gathering device, the
23 anemometers?

24 A There was an e-mail that we received from Rich Simon
25 saying one of the sensors on the tower was not functioning

1 properly.

2 Q And is that something you recall sitting here today
3 or is that something you remember based upon review of an
4 e-mail?

5 A I remember based upon review of the e-mail.

6 Q All right. Now, let's put that aside, and that's
7 kind of hard to do.

8 A Okay.

9 Q But back in 2010, do you remember finding out that
10 there was a problem with the one tower and one anemometer?
11 Do you remember that event happening?

12 A What I remember is a discussion that if we were to
13 move forward with the project, that we would need to fix
14 some of the sensors on the tower.

15 Q Okay. And that came from Simon?

16 A From -- I believe it came to me through Mike Kaschak
17 from Simon.

18 Q Okay. All right. And the timing of that was when;
19 do you remember?

20 A I could not tell you exactly.

21 Q All right. You'd be relying upon the e-mails for
22 timing?

23 A Yes, sir.

24 Q Okay. All right. And was it a decision made to get
25 this issue fixed?

1 A To the best of my knowledge, the idea was to figure
2 out if the transmission would work to decide whether to
3 leave the tower up or not. And if we decided to leave the
4 tower up, to fix the sensors.

5 Q Okay. Did that ever -- did that decision ever get
6 made, based upon your recollection?

7 A No.

8 Q All right. The incident involving Mr. Allen
9 happened before you could make a determination in that
10 regard of --

11 A Yes, sir.

12 Q -- fixing the tower?

13 A Yes, sir.

14 Q All right. And as far as you know, were you ever
15 involved in any decision to fix the tower, take any steps
16 to evaluate cost, anything of that nature, of fixing the
17 tower before Mr. Allen was killed?

18 A No, not that I remember.

19 Q All right. Did you get informed by anyone,
20 including your brother, that Delta Wetlands had decided to
21 pull the plug, so to speak, on the project?

22 A No.

23 Q You told us earlier that Delta Wetlands made the
24 decision to not pursue the wind energy project.

25 A Oh, I'm sorry. I --

1 Q That's okay.

2 A I may have misunderstood the question.

3 Q That's all right.

4 A So --

5 Q How did you become aware that Delta Wetlands had
6 made the determination: We're not going to authorize you
7 to proceed forward on wind-to-energy.

8 A I was made aware from my brother.

9 Q All right. And did he tell you who told him?

10 A He did not.

11 Q And how long after the event where Mr. Allen was
12 killed did that happen?

13 A I can't tell you exactly. It was within a month or
14 two, I believe.

15 Q Did your brother articulate for you why it was that
16 Delta Wetlands had made that decision?

17 A No.

18 Q Did he tell you what he surmised was the reasoning?

19 A I don't remember.

20 Q Okay. So he'd be the best source of information,
21 relative to why they decided to stop it?

22 A Yes.

23 Q And at the time that Mr. Frates told you that Delta
24 Wetlands had made this decision, you had no information
25 that what it was going to cost to fix the towers or what

1 was going to be done. True?

2 A No.

3 Q Is that a true statement?

4 A That's a true statement.

5 Q Okay. Now, as far as NRG; you say you contacted NRG
6 based upon Simon's suggestion that they are a vendor that
7 sells met towers.

8 A Yes, sir.

9 Q And you remember verbally checking with him about
10 price and availability is I think what you told us
11 earlier.

12 A Yes.

13 Q Does that sound about right?

14 A Yes.

15 Q All right. Did you go online and do any research
16 about NRG?

17 A About NRG, I did do some research about the towers
18 themselves that Rich Simon was recommending.

19 Q All right. What did Simon recommend, what kind of
20 tower?

21 A A 60-meter-tall met tower.

22 Q Did he tell you why 60-meters?

23 A Because, apparently, it needs to be tall -- it
24 needed to be that height to get a good reading on the
25 winds.

1 Q And that was based upon his review of going out to
2 the location?

3 A His expert opinion, yes.

4 Q Which included going out there?

5 A Yes, sir.

6 Q Because you had levies and things of that nature, I
7 take it. Did he explain to you why he wanted 60-meters
8 versus 50 or 40?

9 A Just that for this height, having a tall tower was
10 beneficial.

11 Q All right. Now, when you went online and checked
12 him out, did you see there were a variety of vendors that
13 manufactured this kind of met towers?

14 A Yes.

15 Q And did you look at any of the brochure materials of
16 any of them?

17 A Only NRG.

18 Q All right. So you were able to get access to the
19 brochure?

20 A What was publicly available.

21 Q Sure. Okay. And you saw on the brochure that they
22 sold things that accompanied the tower.

23 A Um - yeah, they sell all kind of things.

24 Q Did you see like, for example, the visibility balls?

25 A I do not remember seeing that.

1 Q Do you remember seeing the obstruction lights?

2 A I do not remember seeing that.

3 Q Do you remember that they were selling them in a
4 variety of colors, such as red and white, like hazard
5 colors?

6 A I do not remember.

7 Q Okay. All right. Is it your testimony then that
8 before the task of -- before the purchase of the NRG
9 towers, you were not aware that these towers came from the
10 manufacturer painted in hazard colors, white and red
11 alternating?

12 A Yes, that's exactly right.

13 Q Okay. So had you ever seen a tower like that
14 before, that was white and red, so it was more visible
15 than gray?

16 A A met tower or --

17 Q Any kind of tower.

18 A I've seen towers -- towers painted colors, but not a
19 met tower.

20 Q All right. And then the only met towers you were
21 familiar with that you had ever seen are the ones down at
22 the -- in the mountainous range next to Onyx. Right?

23 A I know I've seen met towers in Palm Springs and
24 Coachella, and other places.

25 Q All right. And those are in, like, housing areas

1 that you've seen met towers?

2 A In Palm Spring, they're in the valley, yeah.

3 Q Okay. Now, did anyone discuss with you -- strike
4 that. When you contacted the representative at NRG, did
5 you tell them -- well, first of all, do you remember the
6 person's name?

7 A I do not.

8 Q Did you tell them the use of the tower, like where
9 you were going to put it?

10 A All I remember is inquiring about the price and
11 availability of a 60-meter met tower.

12 Q Okay. Do you remember -- and I'm just testing your
13 recollection. Did you articulate to the salesperson that
14 you were putting it in an area that you knew there was
15 agricultural work and farming being done?

16 A No.

17 Q Did anyone at NRG explain to you that if you were
18 going to put the tower in such a location, that you -- it
19 would be good practice to let the agricultural aviators
20 know in the area that you're putting in a met tower?

21 A No, not that I remember.

22 Q Did anyone ever communicate that information to you?

23 A No.

24 Q Did you ever have any verbal communications with
25 Adam Smith?

1 A No.

2 Q Now, would it be fair to say that as far as
3 Mr. Smith is concerned, you were relying on his expertise
4 concerning the installation of this tower?

5 A Yes.

6 Q If Mr. Smith made recommendations to you about
7 things like obstruction lights, visibility balls, painting
8 of the tower, things of that nature, would those have been
9 things that you, meaning RRG, would have listened to?

10 A Yes.

11 Q Did -- and you'd had Mr. Kaschak do a review of
12 Mr. Smith as to his qualifications and experience. Right?

13 A Yes, sir.

14 Q And did you have the sense that he had -- based upon
15 the information Kaschak gave you, that this was a
16 well-qualified, experienced, met tower individual who was
17 familiar with the use of the met towers?

18 A Yes, sir.

19 Q If Mr. Smith had communicated to you at RRG, whether
20 it was you or Mike Kaschak or Jim James, recommendations
21 concerning warning devices or safety aspects, would that
22 have been something that you would certainly have
23 considered and evaluated?

24 A Yes.

25 Q You certainly -- from your perspective, Ms. Frates,

1 did you want to hide the tower?

2 A No.

3 Q Did you have any desire to keep it secret from
4 people seeing it?

5 A That would be very difficult to keep it secret, but
6 no, we did not.

7 Q Was there -- would there be any reason for you to
8 make it, from your perspective, a goal for RRG to make it
9 hard for aviators to see, for example?

10 A No.

11 Q Okay. Now, the application process itself. You
12 were not involved in submittals other than helping gain
13 information. True?

14 A Yes, sir.

15 Q All right. Did anybody keep you posted on the
16 progression of the applications?

17 A Jim James.

18 Q All right. And was he the lead person on that?

19 A On that part of the process, yes.

20 Q Now, your brother, did you ever talk to your brother
21 about the applications for permitting of the construction?

22 A I don't remember a specific conversation.

23 Q All right. Would that be the type of thing the two
24 of you would talk about just by yourselves, the status of
25 the application process?

1 A Not really, no.

2 Q Because he knows you're not an expert in that area.

3 Right?

4 A Yes.

5 Q And you know that wasn't his specific

6 responsibility. True?

7 A Yes.

8 Q You knew he'd have to sign it as the principal.

9 Correct?

10 A Yes, sir.

11 Q But you were relying on James and Kaschak to get the

12 document prepared, along with your consultants, so that it

13 could be submitted and approved.

14 A That's correct.

15 Q All right. Did anybody with RRG tell you about any

16 differences between -- the application process between the

17 two counties?

18 A Yes. I was aware there were differences.

19 Q What was the difference or differences?

20 A There were issues with Contra Costa County that made

21 the permit go more slowly.

22 Q What's that? What were the issues?

23 A There was some questions about whether we had to

24 involve the public health aspect. There was an issue

25 about driveway access. I think it took longer for them to

1 make a site visit than it did in San Joaquin County.

2 It just took slightly longer, the process was
3 slightly longer with Contra Costa and had a little bit
4 more back and forth.

5 Q Okay. What was the public health issue?

6 A I think there was just a question of -- some of
7 these forms have a lot of checkboxes to check, and the
8 question was: Did we have to check the box or not. And I
9 believe it was ruled out, that we did not have to check
10 it. But I couldn't tell you specifically.

11 Q Okay. Who was in charge of making sure the project
12 complied with the budget that was set?

13 A Jim James, I guess.

14 Q Okay. Well, when you guess, it tells me you're kind
15 of maybe figuring it out. Do you --

16 A I'm assuming it was Jim James.

17 Q Do you remember anyone being assigned that specific
18 responsibility?

19 A No.

20 Q Was there a concern about going over budget? Was
21 there something that you -- in the time that you had
22 conversations in this organic fashion you described you do
23 things, where there was a conversation about: Hey, we've
24 got to really keep this under budget, you guys --

25 A I don't remember a conversation like that.

1 Q Anybody saying: Hey, we don't want to spend money
2 on things if we can avoid it because we need to keep it
3 under budget.

4 A I don't remember a specific conversation like that,
5 no.

6 Q How about specific conversations about obstruction
7 lights, whether we want to see if we can avoid having to
8 put obstruction lights on?

9 A No, I don't remember a conversation like that.

10 Q How about visibility balls, whether we don't want to
11 spend money for visibility balls?

12 A No, I don't remember a conversation about visibility
13 balls.

14 Q All right. And I take it all these organic meetings
15 you had, no one is keeping notes. True?

16 A I did not keep -- if I kept notes, they would have
17 been provided to the attorneys.

18 Q Okay. Well, that's not my question.

19 A Okay.

20 Q I'm sure you would have provided what we're supposed
21 to get. But my question to you is: Do you remember
22 anybody sitting around, keeping notes at meetings?

23 A No.

24 Q Okay. Now, continuing on that topic of the towers
25 and how the towers were going to be constructed.

1 From your perspective, the issue of obstruction
2 lights, who were you looking to as to recommendations
3 about whether there should be obstruction lights or not?

4 A The County.

5 Q Okay. Well, before you ever get to the County, you
6 have to figure out what the cost is going to be. Right?

7 A The cost of the entire project, yes.

8 Q Okay. And you had -- I think you indicated you did
9 some research on costs. True?

10 A Yes.

11 Q All right. So ever before getting to the County,
12 the topic of obstruction lights and cost of obstruction
13 lights, was that discussed?

14 A I don't remember it being discussed.

15 Q Do you remember people getting pricing for it?

16 A I don't remember people getting pricing.

17 Q Okay. And do you remember anybody associated with
18 construction effort, that is Adam Smith or whoever he's
19 working with, addressing the issue of obstruction lights
20 and cost?

21 A I have no -- I have no memory of that.

22 Q That, again, is something that somebody -- if
23 Mr. Smith had said, "Hey, you should price it out and
24 include hazard or obstruction lights," that's something
25 you would have done. True?

1 A Yes.

2 Q Okay. Now, same thing, visibility balls; you would
3 have done it?

4 A Yes.

5 Q Okay. Painting of the tower, the cost associated
6 with painting of the tower; you would have done that if he
7 made that recommendation?

8 A Yes.

9 Q Okay. Now, with the towers and the application for
10 construction permit, did San Joaquin -- these towers were
11 twins, essentially, they were going to be exactly the same
12 type of tower. True?

13 A Yes, sir.

14 Q And something like a lightning rod, did you know
15 whether a lightning rod would be necessary for these
16 towers?

17 A I did not.

18 Q That would be something you, again, would have
19 relied on the people doing the construction?

20 A Yes, sir.

21 Q Okay. Did anybody with RRG ever hear from the
22 construction end of the business, that is Smith and PDC,
23 the need or requirement of a lightning rod?

24 A I don't remember any conversations about a lightning
25 rod.

1 Q Now, you did -- did you ever examine the actual NRG
2 specs for the tower, like what the specs called out for?

3 A Examine, no.

4 Q Did you ever know that the specs called for a
5 lightning rod?

6 A I did not.

7 Q Do you know whether the FAA considered the
8 appurtenance of a lightning rod being attached to the
9 tower as part of the calculation of height?

10 A No.

11 Q That would be something, again, you would be looking
12 at the construction end of the business. True?

13 A Yes.

14 Q That would be Mr. Smith and whoever he's working
15 with?

16 A Whomever the consultant was, yes.

17 Q Okay. Now, you never saw the towers as after
18 erected. Fair?

19 A That's true.

20 Q Do you know whether Kaschak ever did?

21 A I do not know.

22 Q Did you ever tell him he needs to go up there and
23 check it out?

24 A I did not.

25 Q Was that something you were just leaving to his

1 judgment as to whether he should or shouldn't?

2 A I assume that Mr. James had seen them because he was
3 on the islands more than most of all the people at our
4 shop.

5 Q Did you think that someone from RRG was monitoring
6 the construction end of the project?

7 A Yes.

8 Q Okay. Who did you believe was the person who had
9 responsibility for monitoring the construction part?

10 A The consultant that we had hired to do that --

11 Q Okay. But --

12 A -- from RRG.

13 Q Yeah. What I'm looking at is: Who within RRG was
14 the liaison, if you will, with the construction?

15 A Mike would have been the primary liaison. But I did
16 not assume that he was going to be standing there watching
17 them put the tower up; rather, just managing and
18 consulting.

19 Q Okay. All right. So you didn't really feel a need
20 for RRG to be out there if you had the construction people
21 doing their job.

22 A That's correct.

23 Q All right. After the towers were constructed, did
24 you get any information from your construction team, I'll
25 call them, the vendors that were involved in construction,

1 giving you any information that: Hey, this is in an
2 agricultural area and it's going to be up for a period of
3 time. You need to communicate to the farmers out there of
4 the erection of the tower.

5 A No, not that I'm aware of.

6 Q If Adam Smith or the people he was working with had
7 communicated to you: Towers are up, but you need to --
8 RRG needs to notify Delta Wetlands or the farmers out
9 there that this tower is there and they need to
10 communicate to any aviators, ag aviators of this location
11 of the tower?

12 A Would I have told Delta Wetlands that?

13 Q Well, let me ask you the question this way.

14 A Sorry, I didn't understand the question.

15 Q If the construction vendors, which we know to be
16 Adam Smith and Shah & Associates; if any representative of
17 that side of the project had communicated to you, and you
18 meaning RRG, that one of the things -- "Now that we've
19 been out there and we see the fields and we see what's
20 going on, you need to let any agricultural aviators know
21 that these towers have been erected and let them know that
22 they're up," would RRG have acted on that direction?

23 A Yes.

24 Q Why?

25 A It's just common sense. Right? Why would you not

1 act on that?

2 Q Okay. So you're pretty confident that you would
3 have been responsible enough, if such directions were
4 given, you would have followed them.

5 A Yes.

6 Q Okay. Now, did you become aware, Ms. Frates, that
7 the San Joaquin County required an obstruction light on
8 its tower?

9 A I was aware that that was a requirement, yes.

10 Q And that the obstruction light, ultimately, there
11 was going to be two, one in the middle and one at the top.

12 A I did not know that.

13 Q All right. At some point in time, did you find out
14 that there was one at the top and one in the middle?

15 A After the accident.

16 Q Okay. You just knew before the incident that it
17 required an obstruction light.

18 A Yes.

19 Q Did you ever ask anybody why they were requiring an
20 obstruction light?

21 A No.

22 Q Did Mr. James ever tell you why?

23 A No.

24 Q Did you become aware before the incident that
25 San Joaquin required an obstruction light, and on the

1 Contra Costa permit, they did not require one?

2 A I believe I was aware of that, yes.

3 Q Did you ever ask anybody: Why would one County
4 require it and one County not?

5 A I did not ask.

6 Q Did you ever compare the two applications to
7 determine what information was being provided to one
8 county and what information was provided to the other?

9 A I did not.

10 Q Did you ever think, "Well, we ought to address this
11 issue of why one is" -- "one County is requiring an
12 obstruction light and one is not?"

13 A I did not.

14 Q Have you got any expertise or training in safety
15 practices?

16 A No.

17 Q I mean, common sense, you have that. Right?

18 A I took a first aid class at the Red Cross.

19 Q Okay. Well, that's very responsible of you.

20 My point is, I mean, you're common sense and smart,
21 you understand safety and not putting people at risk if
22 you are aware of a potential hazard. Right?

23 A Of course, yes.

24 Q Okay. But as far as having any specific training
25 and managing and assessing safety hazards, where you have

1 any expertise, education of that, you don't have any
2 formal training of that?

3 A No, sir.

4 Q Okay. Now, did you ever discuss with your brother
5 the fact that one tower was going to have obstruction
6 lights on it and the other tower was not?

7 A No, not that I remember.

8 Q Did Mr. Kaschak ever discuss with you the issue of
9 obstruction lights?

10 A Not that I remember.

11 Q Ever send you an e-mail about obstruction lights?

12 A I saw an e-mail in that that referred to obstruction
13 lights, yes --

14 Q Okay.

15 A -- that I was copied on.

16 Q All right. So you -- was it sent directly to you or
17 was it you were one of the recipients?

18 A I believe I was one of the recipients, yes.

19 Q Okay. Did you ever discuss it with Kaschak?

20 A Not that I remember.

21 Q You knew from dealing with him that he certainly was
22 no expert in safety management practices. True?

23 A Yes, sir.

24 Q How about Jim James; did you know whether he had any
25 experience or background in safety management?

1 A In safety? Not that I'm aware of.

2 Q Okay. And from your perspective, if Mr. Kaschak
3 said, "Hey, we got the word from Adam Smith that we should
4 put obstruction lights on the tower that's going up on
5 Webb Tract," would there be of any -- from your
6 perspective, any budgetary considerations that would have
7 made that difficult to get approval?

8 A I don't think so.

9 Q What I'm trying to find out, Ms. Frates, is whether
10 you folks were being compressed by Delta Wetlands on the
11 budget for this project.

12 A I don't believe so.

13 Q Okay. Let's talk about some documents.

14 Now, what I'm going to do is, some of these
15 materials, I'm going to spend more time with you on than
16 others. You might want to move those glasses -- rather,
17 those bottles so I don't knock them over.

18 A Okay.

19 Q And I'm going to try to do these in as much
20 chronological fashion as I can.

21 A Okay.

22 Q So the numbers may jump around. Don't be paying
23 much attention to the numbers, I'm doing that for the
24 record for Sherree.

25 A Okay.

1 Q Okay. First document I want to show you is
2 Exhibit 172. And let's see.

3 MR. DREYER: Do you have -- I think those are there.
4 If you can maybe hand 172 to her, that would be great.
5 Oh, she's got it. Great. Thank you. You're a step ahead
6 of me.

7 Q This is an e-mail that we went over with Mr. Kaschak
8 that's June 11th, 2008 from Dennis Carlson to Michael
9 Kaschak.

10 Now, you're not identified on this document. I want
11 you to take a minute and look at all the pages, not only
12 the e-mail, but the pages attached to it.

13 First of all, this document would communicate to you
14 that Kaschak is onboard by June of '08. Right?

15 A Yes, sir.

16 Q And you're clearly involved in that time frame,
17 correct, '08?

18 A Yes. I have to say, about this time, I committed to
19 another project, so I probably slightly disappeared on it.
20 But --

21 Q Okay. By "disappeared," you mean your attention is
22 going to maybe be on this new project you've been
23 assigned.

24 A Yes, sir.

25 Q But you're still available and involved in this

1 project. True?

2 A Yes, sir.

3 Q Okay. And that's, again, just kind of the way in
4 which you folks operate there at RRG. True?

5 A Yes.

6 Q All right. Now, have you ever seen this exhibit?
7 And it's paginated 752 through 755.

8 A No. I mean, ever in my life or since before the --

9 Q Before the incident of --

10 A Okay.

11 Q -- January -- in January of 2011.

12 A No, I had not seen this.

13 Q Now, I'm going to ask you specifically about
14 page 754, which is the third page of this document.

15 It says, "Lightning Protection and United States FAA
16 Height Compliance."

17 Have you ever, before Mr. Allen was killed, seen a
18 document that looks like this?

19 A No.

20 Q It talks about specific measurements and the
21 lightning rod, things of that nature.

22 A No.

23 Q All right. And then the next document on that page
24 talks about, specifically, an appendix, FAA-Compliant
25 Painted Version and the Alternating Nature of Orange and

1 White Colors.

2 Have you ever seen this document before?

3 A No.

4 Q Okay. Next, I'd like you to look at a document,
5 Exhibit 39 in the exhibit binder. And it is an e-mail
6 from Kaschak. And unfortunately, I have to go through
7 some of these to find out handwriting and also who they
8 were sent to. This is an e-mail from Mike to somebody,
9 and we don't know who that somebody is. And I don't know
10 whether this is one of the documents you reviewed or not.

11 But just looking at that, can you tell me whether
12 that is something that -- were you the recipient that he
13 addressed that to?

14 A I don't believe I was the recipient and I don't
15 believe I reviewed this one.

16 Q Okay.

17 A But there was a lot of docs in that pile.

18 Q And I'm sure there were. But I'm -- what I'm
19 looking for right now is -- this talks about Dave Forkel,
20 his number; and it also talks about obstruction lights.
21 Where he's calling and leaving messages with the vendors
22 to talk about pricing.

23 Do you remember back in the summer of 2008 that one
24 of Kaschak's jobs was finding out what obstruction lights
25 would cost?

1 A I don't remember specifically that task.

2 Q Would you disagree that that would be an inference
3 we can draw from this, that obstruction lights were being
4 addressed in terms of cost by RRG at that time?

5 A I would agree that that is the content of this
6 message, yes.

7 Q And would you agree that that would be part of his
8 job responsibility, to -- putting together prices?

9 A Yes.

10 Q Okay. Just for background for me, I want you to
11 look at 1A --

12 A 1A.

13 Q -- and 1B; and I'll just ask you whether you ever
14 saw these materials that talked about what Delta Wetlands
15 Project was and the EIR.

16 A No, I never saw these specific materials. 1A, I
17 have not. I have seen 1B, yes -- no, I have not seen 1B
18 either.

19 Q Were you aware that Webb Tract -- in this time frame
20 of '08 when you went up there and looked at the property,
21 were you aware that Webb Tract was a farming endeavor, and
22 that is that agricultural work was going on on Webb Tract?

23 MS. KNUDTSON: Vague and ambiguous. Overbroad.

24 Q BY MR. DREYER: Go ahead.

25 A I was aware that there was agricultural activity on

1 Webb Island, yes.

2 Q Did you know what specific agriculture was being
3 done?

4 A I had always heard that and felt that there was corn
5 and wheat.

6 Q Okay. Did you know that there was air traffic in
7 that area, that there's private airstrips on Bouldin
8 Island, for example?

9 A I did not know that.

10 Q Were you aware that crop dusting, as far as Delta
11 Wetlands is concerned, that they were mindful,
12 specifically, that there was an airstrip close by to be
13 utilized for farming practices on Webb Tract in Bouldin
14 Island?

15 A I was not aware of that.

16 Q All right. You would not have had anything to do
17 with the docs, relative to Delta Wetlands and RRG.
18 Correct?

19 A That's correct.

20 Q All right. Now, there's a Land Use Permit,
21 Exhibit 5. Did you have anything to do with -- and I'm
22 just showing it to you so you can be mindful of what I'm
23 talking about.

24 Did you have anything to do with the filling out of
25 the Land Use Permit to Contra Costa County?

1 A No. I've never seen this.

2 Q All right. And that's obviously your brother's
3 signature. Correct?

4 A That looks like it.

5 Q Okay. Now, let's look at Exhibit 7. This is a
6 portion taken from a variety of different documents
7 dealing with the towers.

8 Do you remember ever seeing this document that
9 showed specifically Webb Tract and the location of the
10 tower where it was going to be?

11 A Yes.

12 Q Okay. And you saw this on the applications that
13 were submitted to the County?

14 A Yes.

15 Q I want you to look at Exhibit 15. Now, this is an
16 e-mail dated December 14th, 2007. And you see at the top,
17 Richard Simon from V-BAR, but below that is an e-mail from
18 you to Richard Simon talking about this wind issue and the
19 potential of what's going on.

20 This would have been an e-mail you sent out to
21 Mr. Simon as your consultant. Correct?

22 A Yes.

23 Q And you copy your brother and Ari and Doug Boxer.
24 Why would you have copied Doug?

25 A Because Doug was working on the carbon development

1 on Delta Wetlands; and so we were trying to figure out
2 would this be a water-carbon, wind-water project, a
3 water-carbon project, a wind-water project.

4 Q Just kind of keeping him in the loop?

5 A Yes, sir.

6 Q And you were contacting Simon because of your prior
7 contact with him at AV?

8 A And Onyx Ranch. He was the diligence consultant for
9 the wind resource at Onyx Ranch.

10 Q Okay. Did they discuss with you any of the
11 concerns, from an environmental standpoint, of - "they"
12 being anybody within RRG - the issue of, you know: Hey,
13 we can go through all this application process. But
14 ultimately, putting in turbines will never happen because
15 of environmental impact on birds in the community.

16 Did anyone ever address that as a potential issue
17 they wanted you to think about?

18 A That they wanted me to think about?

19 Q Yes, you.

20 A No.

21 Q Okay. Now, the actual handling of getting payment
22 from Delta Wetlands, was that something your brother was
23 responsible for?

24 A I don't know who was responsible for it, but I was
25 not involved.

1 Q It wasn't you?

2 A Yes.

3 Q Okay. But clearly, whatever the costs were
4 associated with this project of building towers and
5 construction and all that stuff, that was ultimately going
6 to be paid for by Delta Wetlands. True?

7 A Yes. And I was involved on the e-mails to that
8 effect.

9 Q So you might have seen it?

10 A Yes.

11 Q Okay. Did you ever see the a approved permit,
12 Exhibit 26?

13 A I don't remember seeing it.

14 Q Okay. And that's not something you reviewed in
15 preparation for today. True?

16 A True.

17 Q Now, in terms of the painting of the actual tower,
18 is that something you ever discerned as being different
19 between the two counties?

20 A That was not an issue that was ever brought to my
21 attention.

22 Q Okay. And in terms of the information provided to
23 the County as to what was going on around these towers,
24 you were not involved in that either, I take it. True?

25 A Yeah. Like I said, I helped gather that

1 information. But as far as presenting it to the County, I
2 was not directly involved.

3 Q Have you ever flown over the island in any kind of
4 aircraft, helicopter, plane, anything of that nature?

5 A Other than just a commercial plane that might have
6 accidentally flown over, no.

7 Q Meaning, to the point where you're specifically
8 flying over to look at it.

9 A For this property?

10 Q Yes.

11 A No.

12 Q Now, in terms of the actual property itself, you say
13 you went out and you did look at Webb Tract. True?

14 A Yes, sir.

15 Q Okay. Let's look at Exhibit 32. And let's look at
16 the next one, let's go to 33. Okay. Now, this is -- I'll
17 represent to you, Ms. Frates, that this was taken after
18 the incident. But this is of the subject met tower; we've
19 established that's the subject met tower on Webb Tract.
20 But I'm looking -- showing you this photograph just to
21 show you the land.

22 When you were out there in '07, '08, did the land in
23 and about the location where Simon was considering as an
24 appropriate location, did it look like what you see on 33?

25 A No, it did not.

1 Q What did it look like?

2 A It was -- the area where the met tower was was not
3 disked like this, and it was just grass.

4 Q Okay. Did anyone think that, we should talk to
5 who's farming this area to see what their plans are in the
6 future?

7 MR. DONAHUE: When you say "anyone" --

8 MR. DREYER: Let me rephrase that.

9 MR. DONAHUE: The question is vague.

10 Q MR. DREYER: After you folks went out there to this
11 location, did anybody at RRG address the topic of: We
12 should communicate or inquire of Delta Wetlands, what is
13 the future use of this land potential, so that we take
14 that into consideration relative to deciding on a
15 location.

16 MR. DONAHUE: If you know.

17 THE WITNESS: I don't know about anyone -- I never
18 heard a conversation like that.

19 Q BY MR. DREYER: You don't remember anybody within
20 RRG bringing that issue up. True?

21 A No. That's true, yes.

22 Q Now, as I understand it, the concept was, as you
23 told us, is you're going to build a tower and gather data
24 for a year and then see if you got enough information to
25 make a decision. True?

1 A Yes.

2 Q But the likelihood is that that tower is going to
3 stay up longer to get more information because more
4 information is better. Correct?

5 A That's how it works, yes.

6 Q And that means it might be up for several years
7 before a final, final decision is made; that was a
8 potential?

9 A There was the potential for that, yes.

10 Q So knowing how the future use of the land would be
11 by whoever is doing the agricultural work, did anybody
12 within RRG raise the topic, "We need to address the issue
13 of future use, you know, as maybe as long as three years
14 out into the future by whoever is on Webb Tract and
15 Bouldin Island"?

16 A Not that I'm aware of.

17 Q All right. Now, I asked you about Exhibit 39. I'm
18 going to now ask you about Exhibit 40. Counsel can show
19 you that.

20 This is an exhibit that has the title from
21 Mr. Kaschak, about obstruction lights; and it's June 9th
22 where he now has information about cost.

23 Do you remember him sending -- I'm trying to find
24 out, again, who's the recipient of this document?

25 A I don't remember this and I didn't review it either

1 before we --

2 Q So, did you -- back in that time frame, do you
3 remember Mr. Kaschak giving you information specifically
4 about cost of the sort of material?

5 A I do not.

6 Q Now, let's look at -- let's look at that paragraph
7 after the cost. It talks about the two models, one being
8 more visible than the other. It says, "The salesman at
9 Carmanah," however you pronounce that, "said that if there
10 is not a lot of traffic," parenthesis, "and my
11 understanding is we're mainly dealing with crop dusters
12 and maybe some helicopters," end parenthesis, "then the
13 601 model should work well enough," period.

14 Do you see that sentence?

15 A Yes, I do.

16 Q Now, we asked Mr. Kaschak about this yesterday, and
17 specifically, this statement about, "My understanding,"
18 referring to Mike, "is that we're mainly dealing with crop
19 dusters and maybe some helicopters." This is June of '08.

20 Did Mr. Kaschak ever explain to you that he was
21 mindful that there were going to be crop dusters and
22 helicopters out there?

23 A No.

24 MS. KNUDTSON: Vague and ambiguous.

25 MR. DREYER: Go ahead.

1 MR. DONAHUE: Yeah. When you say "out there," it's
2 vague.

3 MR. DREYER: Okay. Well --

4 THE WITNESS: Not that I remember.

5 Q BY MR. DREYER: This concept of crop dusters and
6 helicopters being in the area where towers are going to be
7 located, did Mr. Kaschak ever bring that up to you as,
8 "Hey, this is something that's potentially out there that
9 we need to be addressing"?

10 A Not that I remember.

11 Q Is that a topic that you remember ever addressing
12 with anybody, that there were crop dusters and helicopters
13 in the area that you folks were doing these met towers?

14 A No.

15 MS. KNUDTSON: Vague and ambiguous.

16 MR. COLEMAN: Same objection.

17 MR. DONAHUE: Same.

18 BY MR. DREYER: He also makes a note here, it says,
19 "Neither light is FAA-certified. I will" -- "And I'm
20 going to double-check the application to see if we need to
21 be FAA-certified."

22 Q Did he ever discuss with you the issue of FAA
23 certification of the obstruction lights.

24 A No, not that I remember.

25 Q Okay. Now, would you agree with me that you were

1 one of Mr. Kaschak's supervisors on this project?

2 A One of them. But as mentioned, by this point in
3 time, I was largely working on another project.

4 Q Okay. What other project were you working on?

5 A The Antelope Valley Solar Project.

6 Q Okay. So it would either be you or Mr. James or
7 your brother that would have responsibility for
8 supervising Mr. Kaschak?

9 A Yes.

10 Q And if your brother and Mr. James know that you're
11 off the grid, so to speak, working on AV, then it would
12 fall to them to supervise Mr. Kaschak.

13 A That's fair.

14 Q Did your brother know about Mike's complete lack of
15 experience in the wind-to-energy area?

16 A Yes.

17 MR. DONAHUE: Object. It's argumentative.

18 Q BY MR. DREYER: Okay. Did you ever see any pricing
19 relative to obstruction lighting?

20 A Not that I remember, no.

21 Q So I'm going to show you -- I'm not going to mark it
22 as an exhibit. But for identification, it's 785 through
23 787, this is a three-page document, just to see if that
24 refreshes your recollection.

25 Did you ever see that document? It's pricing and

1 information from the vendor?

2 A I don't remember seeing this, no.

3 Q Okay. Thank you. Okay.

4 Next, I'd like you to turn to Exhibit 41. Now, you
5 mentioned that there was some kind of a contract that you
6 guys had dealt with Brent, remember that?

7 A Brent Scheibel, yeah.

8 Q And he turned out to be not very reliable from your
9 perspective -- or not -- someone you didn't want to do
10 work with?

11 A His availability was sketchy.

12 Q Okay. But he was someone at some point in time you
13 folks were looking to for information, I take it?

14 A If I remember, he was the original person that Rich
15 Simon recommended to us. When he became unreliable, we
16 then asked for more recommendations.

17 Q Okay. Let's turn to 42. Now, again, your name is
18 not on this, so I'm doubting that you saw this in
19 preparation for today. But do you -- take a minute to
20 look at this.

21 Do you remember seeing this? It deals with the
22 Bouldin met tower application.

23 A I don't remember seeing this particular document,
24 but I -- we discussed earlier issues that came up about
25 driveway and health department and things like that. So

1 some of these issues were on my radar.

2 Q Okay. Well, there is a specific reference here,
3 third paragraph. It says, "Tower Lights. I am making
4 sure that our tower" -- or, excuse me, "our met tower
5 installer is experienced in attaching obstruction lights,"
6 parenthesis, "since we need placement at the top of the
7 tower and halfway up."

8 Do you remember having a conversation with
9 Mr. Kaschak about the tower lights in that regard?

10 A In this particular regard, no.

11 Q Okay. And you told me earlier you don't even
12 remember that there would be two locations for the
13 obstruction lights.

14 A Yes, sir. I just knew, in San Joaquin, we had to
15 have lights.

16 Q All right. Exhibit 43. Now, I'm guessing you saw
17 this one before today because it's addressed to you, "Hi,
18 Lloys."

19 A Yes.

20 Q Okay. This is dealing with Bouldin Island, it
21 appears, but it's -- the title is DW Met Towers.

22 When you reviewed this in preparation for today, do
23 you remember seeing it?

24 A Yes.

25 Q Okay. So he did send this to you?

1 A Yes.

2 Q That would tell us that he still was looking to you
3 for input. Fair?

4 A That's fair. Or at least informing me.

5 Q As it says, "I want to let you know where things are
6 in the Delta met towers."

7 A Yes.

8 Q Okay. Under that first paragraph, "Conditions for
9 Approval," it says, "Number one, tower/obstruction lights.
10 Since the met tower is under 200 feet, do we really need
11 it?"

12 And This is something that he discussed, apparently,
13 with Patrick Crosby, in terms of asking him to call
14 concerning this topic.

15 Do you remember Mr. Kaschak ever bringing up this
16 issue of 200 feet and whether obstruction lights were
17 necessary or not?

18 A I remember it, based on the e-mail. But I don't
19 have a memory of it beyond refreshing my memory with this.

20 Q Okay. Now, I'm going to ask you this. Just, again,
21 common sense, understanding what your background is.

22 If someone told you the FAA requires obstruction
23 lights if a tower is 200 feet or higher, you certainly
24 would want to follow the FAA requirements. True?

25 A That's correct.

1 MR. DONAHUE: Object that that's the requirement,
2 but that's fine.

3 Q BY MR. DREYER: If you were told that, that they're
4 required at 200 feet and above, and you found out that
5 your tower at 60-meters is 197-feet, eight inches, just
6 under 200 feet, would you want to have an obstruction
7 light put on that because it's so close to the FAA? Just
8 not talking about requirements from counties or anybody,
9 just from a responsibility of being safe, that sort of
10 thing.

11 MR. DONAHUE: Objection. Calls for speculation.

12 THE WITNESS: I mean, my assumption is that the
13 rules are there for a reason and I would follow the rules.
14 So I don't know that I would feel compelled to put a light
15 on it.

16 Q BY MR. DREYER: Okay. Would you agree that
17 197 feet, eight inches is pretty close to 200 feet?

18 MR. DONAHUE: Objection. The measurement speaks for
19 itself.

20 Q BY MR. DREYER: I'm just asking for your state of
21 mind.

22 A Yes.

23 Q Okay. If someone were to tell you, let's say like a
24 vendor says to you, "Hey, Ms. Frates, the FAA requires us
25 to put obstruction lights at 200 feet and above; this is a

1 few inches under 200 feet, we can put an obstruction light
2 on there or not."

3 Do you have a sense of what kind of choice you would
4 have made if the vendor put that to you like that?

5 A If someone put it to me like that, I would default
6 to putting the light on.

7 Q Why?

8 A Because it's not that hard to do and why not. It
9 might be helpful.

10 Q Okay. No one ever gave you that information. True?

11 A No, sir. No, they did not.

12 Q Okay. Did you ever say -- do you have a
13 recollection of ever responding to Mr. Kaschak on this
14 concept that, "Since the met tower is under 200 feet, do
15 we really need it?" Did you ever have that philosophical
16 conversation with him about whether you need it or not?

17 A I don't remember a specific discussion about it.

18 Q Did you ever talk about it with your brother?

19 A No.

20 Q Okay. Look at Exhibit 44. This, we know, is
21 Mr. Kaschak's handwriting, because he told us that.

22 Do you remember seeing this document?

23 A I have not seen it, no.

24 Q Okay. Now, I want you to look at Exhibit 173.

25 MR. DREYER: Mr. Stringer, maybe you can help us

1 out.

2 Q It's a June 24th, 2008 document; and it's from you
3 to Mike.

4 Now, is this a document you looked at before today?

5 A Yes, I did.

6 Q Okay. So this document is something you generated
7 reporting to Mike, information relative to Contra Costa.
8 Right?

9 A Yes, sir.

10 Q And this is -- does this tell us that you were
11 involved enough that you're getting information from
12 Contra Costa?

13 A I don't know if I got it directly from Contra Costa
14 or someone else, but yes.

15 Q Well, below, there appears to be an e-mail that --

16 A Oh, yes. I'm sorry. Yes.

17 Q -- Jim James got an e-mail from Avila?

18 Have you ever heard for that name, Francisco Avila?

19 A From the -- from the permitting process, yes.

20 Q Do you know who he is?

21 A He works for Contra Costa County, but I don't know
22 exactly what he does.

23 Q Did you read his deposition?

24 A I did not.

25 Q If you were -- hypothetically, if -- would you want

1 Mr. Avila, if he's the County officer who's looking at
2 this met tower application, would you want him to be fully
3 informed of what the use of the met tower is and the land
4 that the met tower is on?

5 A Would I want him to be? I mean, yes.

6 Q Okay. He indicated that he would want to know --
7 well, I'll just ask you to assume hypothetically that
8 he -- if he said, "I would want to know whether the area
9 was being used agriculturally and potential for
10 agricultural aviators to be on it, I'd want to know that,"
11 would you want to give him that information if you knew
12 it?

13 A Yes.

14 Q Okay. Now, here is 195, which is July 24th:
15 Seeking Met Tower Installation Recommendations.

16 This appears to be an e-mail from Mr. Kaschak to
17 Mr. Simon addressing this issue of installers.

18 Does this sound consistent that you reached out to
19 Simon?

20 A Yes, that sounds consistent.

21 Q It says, "Lloys and I were hoping to contract
22 Brent," blah, blah, blah.

23 But this is the issue you were talking about
24 earlier. True?

25 A Yes, sir.

1 Q All right. Let's look at Exhibit 174. Do you
2 remember getting any information from Mr. Kaschak about
3 who the point of contact was with Contra Costa?

4 A I don't remember. I mean --

5 Q Okay. Let's go to Exhibit 175. Now, this is an
6 e-mail from Mike to you. True?

7 A Yes.

8 Q And did you review this in preparation for today?

9 A Yes.

10 Q Second paragraph, it says -- the e-mail is talking
11 about dealing with Contra Costa. "Jim should probably
12 take a quote for obstruction lights, stating that it is
13 our intention to place obstruction lights on the tower if
14 they ask. From my understanding, this is all he needs to
15 take with him, and it's just in case. I will send both of
16 you a diagram showing the lights that will be placed at
17 the top and midpoint of the tower."

18 Now, do you remember getting this e-mail addressing
19 this topic?

20 A I don't remember receiving it, but I did review it.

21 Q All right. Understanding you reviewed it, and now
22 that we're focusing on it right now, does it refresh your
23 recollection in July of '08 there was a discussion
24 regarding strategy of dealing with obstruction lights and
25 Contra Costa, what you were going to do if the question

1 was asked?

2 A I don't have a strong memory of this, to be honest.
3 So I would -- I have to say that my memory is based on the
4 document I read.

5 Q Okay. You don't deny the document happened, you
6 don't deny that you got it, you just don't appear to have
7 a recollection of the conversation?

8 A That is correct.

9 Q Do you remember, in this time frame, Ms. Frates,
10 that you folks -- did Mr. Kaschak ever discuss with you,
11 "Well, let's make a representation that we're going to put
12 lights on, and that's our intent," when, in fact, it
13 wasn't?

14 A I don't remember a conversation like that, no.

15 Q Would it be fair to say that you folks at RRG,
16 meaning you and your brother, Mr. Swiller, wouldn't want
17 to make a misrepresentation to the County about what
18 you're going to do?

19 A That's fair.

20 Q And looking at this e-mail about that concept of
21 saying we're going to do it and it's our intent, but only
22 if they ask us, and that strategic choice. That just
23 doesn't ring a bell at all, I take it?

24 A It does not ring a bell, no.

25 Q Okay. Did Mr. James ever discuss that topic with

1 you about how he's going to go there and, "Even though
2 we're not going to call out for lights, if they ask us, we
3 can show them, oh, yeah, we're going to do lights"?

4 A Not that I remember. I might have, but I don't
5 remember.

6 Q All right. Is that the kind of -- is that
7 consistent with what you think you would do at RRG, that
8 you would say you're going to do something when you're
9 not?

10 A No. Generally, no.

11 Q Okay. You wouldn't want to mislead the County.
12 True?

13 A No. That's very true.

14 Q Okay. Let's look at Exhibit 45, if you would. And
15 this is Echelon Environmental Engineering; it's a summary
16 of costs. When Mike would get something like this from
17 somebody, would you see it -- well, strike that.

18 Do you remember seeing this particular Echelon
19 document.

20 A No, I do not.

21 Q Okay. Then there's Exhibit 47. I want you to look
22 at that. July 31st, 2008. And it says, "Lloys, I want to
23 be sure to pass along graphics illustrating that we are
24 going to place obstruction lights at the top and midpoint
25 of the tower in Contra Costa. I thought Jim should have

1 this illustration, as well as the obstruction lights bid,
2 when he goes before the hearing. As a PDF, we should be
3 able to send it along for him to print out at his
4 convenience."

5 Now, this e-mail is obviously addressed to you.
6 True?

7 A Yes, that's true.

8 Q Do you remember getting this e-mail, independent of
9 looking at it?

10 A No, I don't.

11 Q So this, again, is the topic of the graphic. Do you
12 remember seeing a graphic for the Webb Tract showing the
13 obstruction lights at the midpoint and the top of the
14 tower just in case Jim needed it at the hearing?

15 A I don't remember seeing that document.

16 Q Have you seen that document in preparation for
17 today?

18 A Actually, no. I just received this e-mail, but not
19 the document.

20 Q Okay. And apparently, you brought him back a gift
21 from Argentina, so you've been down to Argentina?

22 A Yeah. I went to a conference for three weeks during
23 this time.

24 Q Focusing on renewable energy, I bet?

25 A International Women's Forum.

1 Q Okay. Right. See, that's why I shouldn't be
2 guessing either.

3 Okay. Now, let's look at same date, but Exhibit
4 177. Okay. There is reference to you being copied on
5 this e-mail from Kaschak to Rick Simon?

6 A Uh-huh.

7 Q Dealing with the same issue. Do you -- this, again,
8 would then -- you're still looking at trying to get an
9 installer, July of 2008?

10 A I think that was the issue that Rich -- that
11 Scheibel had been flaking, and we were asking for
12 recommendations for other installers.

13 Q All right. So if we have a document, Exhibit 45,
14 it's the same time frame, from Echelon. In terms of who
15 was dealing with the vendors, for getting pricing, would
16 that have fallen under Mr. Kaschak's responsibilities?

17 A Yes.

18 MR. DREYER: Okay. And let's look at
19 Exhibit 170- -- I think it's 78. That's where I was
20 mis-marking documents. Or maybe 179. It's the August 1st
21 e-mail -- no. Let's see 177 -- or 178. Yeah, that's the
22 one, 178.

23 Q Now, this is a document that, it's -- and I'm
24 looking specifically at the middle. It says Adam Smith to
25 Mike and others, Cole Frates. But it says --

1 MR. COLEMAN: Just so the record is clear, the Bates
2 is 1798.

3 MR. DREYER: Yes. Correct.

4 Q And it's addressed to Michael and Lois. And I'm
5 sure it's the first time you've ever been referred to as
6 Lois.

7 But do you remember getting an e-mail from Mr. Smith
8 forwarded to you in some fashion?

9 A I don't. And my e-mail address isn't on here, so --

10 Q I see that. So I'm just asking whether this
11 refreshes your recollection that you got something
12 directly passed on to you by Mike from Echelon.

13 A I don't remember this.

14 Q Okay. Let's look at Exhibit 49. Now, this is a
15 February 6th, 2009 e-mail from Echelon. So I'm jumping
16 ahead in time here a little bit. And this is,
17 "Attention: Michael Kaschak." And it gives some pricing
18 relative to a met tower.

19 Did you ever see this document from Adam Smith to
20 Michael Kaschak in that time frame of February of '09?

21 A I don't remember seeing this, no.

22 Q Now, the towers were erected in April. True?

23 A I believe so, yes.

24 Q Okay. Now, on this document, you will see cable
25 visibility balls, "four bright orange balls, for increased

1 visibility."

2 Do you see that reference?

3 A I see that reference.

4 Q And then a line through it, true, the number 45?

5 A I see the line, yes.

6 Q Okay. Now, looking at the handwriting on this
7 document, do you recognize the handwriting?

8 A I don't know whose it is. It's not mine.

9 Q Okay. And I assume you're not a handwriting expert?

10 A I am not a handwriting expert.

11 Q But it's clearly not yours?

12 A I have a rather odd handwriting, so --

13 Q Okay. It's clearly not yours?

14 A Yes, sir.

15 Q But looking at it - I assume you've seen your
16 brother's handwriting for a while - does it look like your
17 brother's handwriting?

18 A No, because you can read what it says.

19 Q Okay. Does it look like Jim James's handwriting?

20 A I couldn't tell you. I haven't seen a lot of Jim
21 James's handwriting.

22 Q Okay. In this time frame, just within two months of
23 the incident -- rather, of the installation of the towers,
24 do you remember Mr. Kaschak discussing with you the issue
25 of visibility balls?

1 A I don't remember visibility balls, but I do know on
2 the Bouldin tower we had to have some lights and things.

3 Q Okay. Well, right now, I'm talking about visibility
4 balls.

5 Do you remember that topic coming up?

6 A I do not remember discussing visibility balls.

7 Q And, in fact, as you sit here today, your
8 recollection is no one ever brought up visibility balls to
9 you. True?

10 A I have no recollection of visibility balls.

11 Q All right. Now, let's look at Exhibit 181. And
12 this is RRG1836.

13 Now, his one is addressed to you. I assume you've
14 reviewed this before --

15 A Yes.

16 Q -- me asking you questions. Okay.

17 So this is, "How is Richmond?" What does Richmond
18 refer to?

19 A Richmond, California, which is where our solar power
20 is, which is the AV Solar Power.

21 Q All right. Now, he talks -- and my focus here is on
22 that first paragraph. He's giving you an update on the
23 tower. So that would tell me that you folks, meaning you
24 and Michael, are still -- Michael is still keeping you
25 engaged on the project. True?

1 A Clearly, yes.

2 Q And it says, "I spoke with Cole and he's fine with
3 the additional expense."

4 That is the expense being more expensive than what
5 Brent had originally given.

6 Did you ever talk about the costs associated with
7 this and the difference between Brent and Adam Smith with
8 anyone?

9 A I don't remember talking about it. I -- this is
10 something I read after the fact, yes.

11 Q Okay. All right. Now, let's look at Exhibit 182.
12 And this is an e-mail from Paulo Pueliu - I'm not sure I'm
13 pronouncing that absolutely correctly - to Mr. Kaschak.

14 Did you ever see any e-mail correspondence from
15 Mr. Pueliu that you can recall?

16 A Not that I recall, no.

17 Q Okay. So the key question here is: Whose
18 handwriting is this. Is it yours?

19 A There's no handwriting on this.

20 Q I'm going to show you --

21 MR. STRINGER: Oh, 183.

22 MR. DREYER: 183. Okay. Thank you.

23 MR. STRINGER: There you go.

24 THE WITNESS: This is not my handwriting. I
25 couldn't tell you whose it is.

1 Q BY MR. DREYER: Okay. It doesn't appear to be --
2 it's certainly not your brother's because we can read it?

3 A It is not my brother's.

4 Q Okay. All right. Let's look at Exhibit 184. This
5 is January of '09, so we're now within three months of
6 installation. It's dealing with the applications.

7 Do you remember -- this is the same question I asked
8 you a second ago to see if it refreshes your recollection.

9 Do you remember seeing any updating information
10 coming from the PDC representative?

11 A I don't.

12 Q In fact, you don't even remember PDC, I take it?

13 A That's clear, yes. That's true.

14 Q Okay. I'd like you to look at 197. Do you
15 recognize the handwriting on this RRG document?

16 A I don't.

17 Q Now, I don't know -- I'm going to show you -- I
18 don't know if we've marked this, but I'm just going to
19 show it to you. It's 1525 pagination number. There's a
20 bunch of handwriting. Again, it's another RRG document.
21 Do you recognize that handwriting?

22 A I don't.

23 Q Okay. Let's look at Exhibit 53. Now, this would
24 have been an e-mail you looked at in preparation for
25 today. Correct?

1 A Yes.

2 Q And this is an example of you getting an updated
3 information from Mr. Simon regarding the Delta project and
4 that -- the information regarding the wind. True?

5 A Yes, sir.

6 Q So this is a report after the one-year anniversary,
7 that would have been April-ish of 2010 would have been
8 one-year anniversary of installation. True?

9 A Yes.

10 Q Now, I'm assuming you're involved in other things
11 during this time frame?

12 A That's correct.

13 Q After the towers are up for a year, who did you see
14 as being the person principally responsible for monitoring
15 this project within RRG, if anybody?

16 A Mike and Jim.

17 Q Okay. Now, this, you remember getting this e-mail?
18 This is where he talks about, "I want to draw your
19 attention specifically to the fact that both towers now
20 have malfunctioning 60-meter anemometers."

21 A I do remember this, because I remember the -- point
22 about it. There was redundancy there in the second
23 sentence of the second paragraph.

24 Q Well, meaning what to you?

25 A Meaning that although those sensors weren't

1 functioning optimally, that we were still getting data
2 from other sensors.

3 Q Well, you also must have seen then where he says:
4 "We would strongly urge you to have these towers taken
5 down and the sensors replaced."

6 A Yes, sir.

7 Q Okay. He was your consultant. Right?

8 A Yes, sir.

9 Q So you were relying upon his recommendations. True?

10 A Yes.

11 Q He's the guy that needs to get the information for
12 you guys to rely upon it. True?

13 A Yes.

14 Q There's no question in your mind that his direction
15 and desire was to have the towers taken down and the
16 sensors replaced.

17 A That is clear.

18 Q Okay. He wasn't satisfied with the redundant
19 sensor, apparently. True?

20 A It appears that way.

21 Q Right. Now, was this, from your standpoint,
22 Ms. Frates, the first time you were aware that there was
23 an issue of the malfunctioning anemometers? Or did you
24 know about it before that?

25 A I couldn't tell you when I found out about it.

1 Q Did you communicate this information to Cole?

2 A I don't remember communicating it to him.

3 Q Did anybody communicate it to Cole, as far as you
4 know? I'm going to ask him, obviously, but I'm
5 wondering --

6 A I don't know.

7 Q All right. And let's look at Exhibit 201. This is
8 a month or so later. And it's from Mike to Dave Dorrance.
9 And, apparently, someone sent out an e-mail regarding
10 status. Maybe it was Mr. Dorrance. I can't really tell.
11 But it says, "Lloyds is traveling today, but I believe
12 she's put together info on the opportunity before. The
13 site looks promising because winds in the area tend to
14 blow the strongest during the summer months, May through
15 August."

16 Is that consistent with your recollection?

17 A Yes. That's why this site was considered unique.

18 Q Okay. And because high need -- high demand at that
19 point in time?

20 A Right. In the summer, it's hot. People turn on
21 their air conditioners; we need power.

22 Q Okay. I live in Sacramento, I'm familiar with that
23 concept.

24 Did -- and this -- in terms of promising, that's,
25 again, something you would rely entirely on Simon. Right?

1 A Yes, sir.

2 Q And it says here, "We don't have a great sense of
3 the actual wind potential until we've received a year's
4 data worth. But I'll track Lloys down and we'll have
5 something put together for you tomorrow."

6 Now, do you remember that there was some need or
7 something that was going on in November that was demanding
8 information, or a response about the status of the project
9 such that Dorrance would be in touch?

10 A I don't remember this. But generally, at the end of
11 the year, we do reports on our projects, so --

12 Q Dorrance was the dealing with Delta Wetlands as to
13 water storage. Right?

14 A Yes, sir.

15 Q Okay. So he would have been in contact with Delta
16 Wetlands?

17 A I don't know what his chain of contact was.

18 Q Did your brother ever contact you about this issue?

19 A About this particular issue?

20 Q Yes.

21 A No, not that I'm aware of.

22 Q You'd had the towers up for more than a year,
23 correct, as of November of 2009?

24 A Didn't they go up in April 2009?

25 Q Okay. So you're looking at waiting until the one

1 year? Is this an example of what we talked about earlier
2 that you need really a year's worth of data?

3 A Yes, sir. Our understanding was anything less than
4 a year is irrelevant.

5 Q Okay. Let's look at 189. Starting at the bottom,
6 there's a March 7th, 2010 e-mail from Jim to you. We only
7 have the first part of it -- or of the e-mail.

8 It says, "Lloyds, we're getting beat up for the DW
9 overall budget of which wind is a small part. It looks
10 like the last two-quarter invoices have been about 275.
11 This April should wrap up a full year of monitoring."

12 Do you remember discussing that issue with Jim that
13 DW was having some issues with the overall budget?

14 A I remembered it when I read this e-mail.

15 Q Okay. So that did refresh you. Right?

16 A Yes.

17 Q "I remembered we were having some issues on budget"?

18 A Yes, sir.

19 Q Your only involvement with Delta, though, was on
20 this wind-to-energy project. Fair?

21 A Yes, sir.

22 Q All right. And then reading up, it says, the next
23 day, March 8th, Kaschak writes, "Any chance we could make
24 it \$1,500? V-BAR rates went up and it's been running them
25 about \$1,250 a quarterly report."

1 Is that consistent with your recollection that
2 Kaschak was the one dealing with Simon?

3 A Yes.

4 Q Now, this is your e-mail to Mike. It says, "It's
5 \$1,250 a quarter. Don't we need to budget \$5,000 for the
6 year?"

7 And so you're -- this would communicate to me at
8 least you're engaged with this concept -- rather, the
9 project, and dealing with budgetary issues. True?

10 A Yes, at this issue.

11 Q So that, again, is part of this organic operation
12 where you have multiple people giving their input. Right?

13 A Yes.

14 Q Now, there's an e-mail from Mike, it says,
15 "April 15th marks a full year the tower has been up.
16 Given that we are one to two weeks in which the installer
17 had to go back out to reactivate the memory cards, so we
18 should have the final, quarterly report in May."

19 Now, what does that mean? Do you know, relative to
20 was there as problem with the memory cards or was it not
21 getting data? What was going on?

22 A I don't know anything other than it seemed to have
23 delayed the report.

24 Q Okay. Do you have a recollection that there was
25 some problem with the towers getting information for you

1 in the first part of 2010?

2 A I don't have a recollection of that.

3 Q Let's look at Exhibit 191. And I think this is a
4 three -- is it a three-page exhibit? Okay. We've already
5 talked about the first page. Now, I want you to look at
6 the second page, which is November 1, 2010 e-mail
7 exchange. And you're not on here. It talks about, "The
8 met tower installer was supposed to go out to both sites
9 in late June or early July. Been trying to get ahold of
10 him and haven't been able to."

11 Do you remember there being some issue in getting
12 ahold of Smith during the summer of 2010?

13 A I don't.

14 MR. BRASCH: Objection. Assumes facts not in
15 evidence, getting ahold of Smith.

16 Q BY MR. DREYER: Go ahead.

17 A I don't remember an issue around that.

18 Q All right. You're not saying there wasn't, you just
19 don't have a recollection, I take it?

20 A That's correct.

21 Q Do you recall Mr. Kaschak telling you he's having
22 problems with Smith being responsive to requests to do
23 things?

24 MR. BRASCH: Same objection.

25 THE WITNESS: I don't recall any conversation to

1 that.

2 Q BY MR. DREYER: Okay. Do you remember a
3 conversation with Kaschak where you're talking about
4 because of issues with Smith being responsive, he wanted
5 to talk to a different vendor about going out and
6 servicing the towers?

7 MR. BRASCH: Same objection.

8 THE WITNESS: I don't remember a conversation.

9 Q BY MR. DREYER: Do you remember him talking with
10 another vendor by the name of Mariah, or Mariah, something
11 of that nature?

12 A I don't.

13 Q Okay. Look at the last page of that exhibit which
14 is 1975, which is Kaschak telling Simon, it appears, that
15 they received a quote from Maria, which I believe is
16 supposed to Mariah, to service the towers.

17 Does that refresh your recollection?

18 A It does not.

19 Q Now, after Mr. Allen's death, were you involved at
20 all in what was going on with the Delta Wetlands
21 wind-to-energy analysis and project?

22 A After his death, no.

23 Q And you found out about his death, and then,
24 obviously, a lot of things happened in response to the
25 death in terms of looking into things about the project.

1 Were you involved in any post-incident
2 investigation?

3 A No.

4 Q You just knew it happened; you knew -- it affected
5 people within your operation. Correct?

6 A Yes.

7 Q Okay. Did you ever talk about it with your brother?

8 A Only with Charlie present.

9 Q Okay. So you're clearly prepared on that issue.

10 So let me ask it to you this way: At any point in
11 time -- now, Charlie is also a friend, right, along with
12 being a lawyer?

13 A Yeah, and a work colleague.

14 Q Okay. Did you ever discuss the death of Steve Allen
15 with your brother where Mr. Stringer was not present?

16 A No.

17 Q Did you ever discuss it with Mr. -- your brother
18 when Mr. Stringer was present where he wasn't there in his
19 capacity, from your perspective, as a lawyer?

20 A No.

21 Q Okay. I want you to turn to exhibit -- I think it's
22 96.

23 MR. DREYER: Okay. And now, this is -- it's got a
24 number of pages to it. Right, Jim?

25 MR. DONAHUE: Yes.

1 MR. DREYER: Okay.

2 Q I want you to turn to page 111, which is pagination
3 number 111?

4 A Okay.

5 Q Okay. Do you recognize that handwriting?

6 A I do not.

7 Q I'm going to find this guy if it kills me.
8 112, do you recognize that handwriting?

9 A 112, no.

10 Q 113?

11 A I do not recognize that.

12 Q Certainly not your handwriting. Right?

13 A No, it is not.

14 Q 114?

15 A I do not recognize that.

16 Q 115?

17 A Same, I don't recognize that.

18 Q 16?

19 A Don't recognize it.

20 Q 17?

21 A Don't recognize it.

22 Q Now, there appears to be two different handwritings
23 there. And I'm no handwriting expert, but looks like
24 it -- do you recognize -- like you see where the word
25 "Webb" is written at the top?

1 A Yes.

2 Q Do you recognize that handwriting?

3 A I don't recognize it, no.

4 Q You see in the column on the right-hand side where
5 it says "Estimated project value, \$30,000, Department of
6 Conservation," do you recognize that handwriting?

7 A I do not.

8 Q 118, do you recognize that handwriting?

9 A I don't.

10 Q And as I understand it, it could be Mr. James's and
11 that you don't recognize Mr. James's handwriting. True?

12 MR. DONAHUE: Objection. Speculation.

13 THE WITNESS: I don't know what Mr. James's
14 handwriting looks like. I couldn't tell you.

15 Q BY MR. DREYER: Okay. Let's go to page 120; have
16 you ever seen page 120 before?

17 A No, not that I'm aware of.

18 Q Let's go to page 123. Now, this document -- this
19 document is an RRG document entitled, Delta Wetlands
20 Meteorological Tower Project Description.

21 Do you see that?

22 A Yes.

23 Q All right. Now, this -- we've seen this in a number
24 of different derivations or locations. It appears to be
25 about a five-page document, and it's numbered down at the

1 bottom pages one through five.

2 Have you seen this five-page document before?

3 A Yes.

4 Q All right. Did you have anything do with the
5 creation of this five-page document?

6 A Yes, I believe I did.

7 Q Okay. What -- let's go through it then page by
8 page. "Project Overview." Do you have anything to do
9 with the creation of that paragraph?

10 A I think I wrote this document; I compiled it.

11 Q All right. And where did you get this information
12 from?

13 A From information we had gathered from our
14 consultants.

15 Q Okay. So let's look at this -- the text then is
16 your work. True?

17 A Yes, sir.

18 Q Okay. And the photographs you picked from different
19 locations?

20 A Yes.

21 Q All right. So let's look at the first paragraph.
22 And in -- strike that.

23 In your understanding, this was to be submitted to
24 the agencies for consideration for information for the
25 applications when you created it?

1 A Yes.

2 Q It was for that purpose?

3 A Yes.

4 Q All right. "Renewable Resources Group is proposing
5 to install this meteorological met tower on Webb Island in
6 the Sacramento and San Joaquin Delta which is owned by its
7 partner, Delta Wetlands Properties."

8 That's your work; you're authoring that?

9 A Yes.

10 Q Did anyone ever explain to you - and I'm not being
11 critical, I'm just asking whether the topic ever came up -
12 that it's referred to as Webb Tract versus Webb Island?

13 A I -- clearly they didn't explain it to me, because I
14 called it island rather than, I see on the map, it says
15 tract.

16 Q Okay. "The land is currently being farmed and
17 assessed for a potential water storage facility."

18 Where did you get the information it's currently
19 being farmed?

20 A I had been told that or I saw it on the site visit.

21 Q Okay.

22 A Probably both.

23 Q All right. And who told you that; do you remember?

24 A I don't know specifically. I just always knew there
25 was farming out there.

1 Q All right. And you knew people were going to be
2 relying upon this information. True?

3 A Yes.

4 Q Did you talk with anybody associated with Delta
5 Wetlands on this issue of farming?

6 A I did not.

7 Q Did you ever ask your brother to, you know -- "We
8 need to get specificity about what the use is going to be
9 of the Webb Tract, because this tower is going to up for
10 more than a short period of time, so we need to know
11 what's going to happen in the future in different
12 seasons," that sort of thing.

13 Did you ever have that sort of conversation with
14 your brother?

15 A I did not ask him that.

16 Q Did you ever think -- and it's always easier
17 hindsight to think about stuff. So I'm just trying to
18 find out what your state of mind was, Ms. Frates.

19 In looking at this, did you have an understanding
20 that farming depends upon weather and seasons?

21 A Of course I understand that.

22 Q And that different seasons result in different types
23 of farming?

24 A Yes, I know that.

25 Q And you understand the concept that sometimes

1 they'll let a field -- you know, leave a field alone for a
2 year and then come back and farm it again after it has an
3 opportunity to regenerate its minerals and properties for
4 growing?

5 A Yes, I am aware that people do that.

6 Q Did you ever think, "Hey, we better find out what's
7 going to happen with this area that we're talking about
8 met towers, from the actual people who are utilizing the
9 island"?

10 A I did not. I assumed if it was approved, then
11 people -- it fit in with the overall plan of the project.

12 Q You understand if you make assumptions you can make
13 mistakes?

14 A I do understand that.

15 Q So my question to you is: As someone who has a
16 skill level of doing research, did you ever ask to get
17 access to the people who are actually utilizing the land
18 for farming where these towers were going to go?

19 A I did not.

20 Q Now, it says "Project Locations," and you talk about
21 the project location. And the sentence right underneath
22 the map of Webb Tract says: "The property is currently
23 being farmed for corn. And towers carrying electrical
24 lines are already in place on the island."

25 So that would have been information you got. True?

1 A Yes.

2 Q Where did you get that the property is currently
3 being farmed for corn?

4 A I don't remember specifically, but from someone on
5 our team.

6 Q Okay. So someone within RRG got that information
7 for you?

8 A Yes.

9 Q Okay. "Met Tower Description," RRG is proposing to
10 install 60-meter tall towers.

11 Now, this tower was what Mr. Simon recommended to
12 you, that's why you're putting that there. Correct?

13 A Yes, sir.

14 Q Did you have any idea about the height of a
15 lightning rod?

16 A I did not.

17 Q The need of a lightning rod?

18 A I did not.

19 Q All right. If you had known -- if you had known,
20 Ms. Frates, that the 60-meter tower is 60-meters, but that
21 lightning rod is taller than -- makes it taller than
22 60-meters, in fact, it goes up to 62, plus, meters, would
23 you have included that information in this?

24 A Yes.

25 MR. DONAHUE: Lacks foundation that it's part of the

1 tower.

2 MS. KNUDTSON: And assumes facts not in evidence.

3 MR. DREYER: Well, we're not assuming anything
4 because we don't have all our evidence yet.

5 Q In this document, on page two, you have a chart that
6 talks about the physical nature of the erected height of
7 the tower. Correct?

8 A Yes.

9 Q And you say specifically 197 feet, eight inches and
10 a quarter. Right?

11 A Yes.

12 Q So you obviously got that off of something?

13 A I believe I got all this information off of NRG's
14 website.

15 Q All right. And there's no reference here to
16 lightning rod. Correct?

17 A Not in my text, no.

18 Q Did Mr. Smith, or anybody associated with the
19 construction, tell you, "We have to put a lightening rod
20 on this?

21 A I have no memory of a discussion of a lightning rod.

22 Q Did Mr. Smith ever provide you any information,
23 meaning RRG, as to how he intended to put the lightning
24 rod on this tower?

25 A Not that I'm aware.

1 Q Okay. Now, the top line on page three, says, "The
2 60-meter (197 feet tower) is lower than the 200 feet
3 threshold set by the FAA, and as such meets FAA
4 regulations." You see that?

5 A Yes.

6 Q That's from you. True?

7 A I wrote it, yes.

8 Q Okay. Where did you get it?

9 A From our consultants.

10 Q Who was?

11 A I don't know exactly which one told me this.

12 Q Okay.

13 A But there was this sort of concept of a magic
14 200-feet number floating around.

15 Q Okay. And the magic of this number, did you know
16 what the magic was?

17 A No. Just that at 200-feet and taller, the FAA gets
18 involved.

19 Q Okay. And was that a bad thing?

20 A I don't think it's a bad thing or a good thing, it's
21 just how it works.

22 Q Okay. Did you know, with them getting involved,
23 what happens.

24 A I did not, no.

25 Q Did you ever ask?

1 A I did not ask.

2 Q Did you ever conduct any research?

3 A I did not.

4 Q And you included a picture. Right?

5 A Yes.

6 Q Now, this is a bad copy. It's black and white.

7 Do you know whether the actual picture shows a
8 lightening rod on it?

9 A I do not.

10 Q All right. Let's try to figure out who you got this
11 information from, that you put it in this document and
12 gave it to the County so they could rely upon it.

13 And you knew the County was going to rely on the
14 representations. True?

15 A Yes, sir.

16 Q And you knew your brother was going to sign a
17 document that was going to say this is true and accurate?

18 A Yes, sir.

19 Q Okay. The height of the tower, that information, is
20 that something you were getting from NRG, the construction
21 vendors, or Mr. Simon?

22 A Mr. Simon recommended a 60-meter tower. The
23 information in this document, I got from NRG's website.

24 Q Okay. Was there anything on the NRG website that
25 talked about a 200-feet threshold set by the FAA so it

1 meets FAA regulations?

2 A I don't know.

3 Q Did you see anything on the NRG website that also
4 indicated that if you're putting these towers, regardless
5 of height, in agricultural fields, you need to notify
6 agricultural aviators of its location?

7 A I don't remember seeing anything like that.

8 Q Okay. Let's look at page four, it says, "Timing."

9 "RRG would like to install the tower by the end of
10 March of 2008 in order to maximize the data collection."

11 So this tells me that you must have been -- you must
12 have made this long before March of 2008. Right?

13 A Before 2008. This doesn't seem to be dated.

14 Q Oh, I know it's not.

15 A Yeah.

16 Q I'm just trying to figure out --

17 A Yes.

18 Q It had to be before March of 2008?

19 A Yes.

20 Q And likely, it's like in 2007?

21 A I don't know when it was, but it was before March of
22 2008.

23 Q Okay. Well, you know you got to put it in there --

24 A It takes time to get permits, yes.

25 Q Okay. Do you know why there was this delay?

1 A I just have a recollection that Contra Costa County
2 took longer; and I don't know exactly why. There were a
3 number of site visits and other things that had to happen.

4 Q And even though it look them longer, you were
5 holding off on San Joaquin after you got the permit
6 because you wanted to do it simultaneously?

7 A I don't remember that decision.

8 Q Okay. Do you know who made that decision?

9 A I do not.

10 Q "The tower will be placed for at least one calendar
11 year. At which time, it will be determined whether or not
12 it's viable to pursue a wind-to-energy project at this
13 location."

14 Where did you get that information?

15 A That's from Rich Simon, the suggestion that you have
16 to have at least one year of data.

17 Q Okay. But this clearly considers that we can then
18 make a determination as to whether we should keep going or
19 not?

20 A Yes. Yes, sir.

21 Q Do you know what the permit from the County said,
22 relative to when you had to take it down?

23 A I do not.

24 Q Do you know whether it was open-ended for the
25 County?

1 A I don't know.

2 Q Who would be the person at RRG who would have had
3 the responsibility to comply with what the County was
4 saying?

5 A Jim and Mike.

6 Q Jim James and Mike Kaschak?

7 A Yes.

8 Q So those two gentlemen would have that
9 responsibility. True?

10 A Yes.

11 Q Now, I want you to look at page five. This is
12 something you would have included. True?

13 A Yes.

14 Q This is the NRG document that shows what is the
15 60-meter system. Right?

16 A Right.

17 Q Now, I want you to look at the box that says,
18 "System Includes."

19 A Okay.

20 Q And I want you to go down to where it says, three
21 from the bottom, "Grounding Kit: 1' to 7' lightning spike
22 and 2' to 7' grounding rods."

23 Do you see that?

24 A Yes, I see that.

25 Q Now, you did attach this to the document. Right?

1 A I did.

2 Q And now, having shown that to you, does that refresh
3 your recollection that you were talking about a lightning
4 spike, lightning rod being included?

5 A No, it does not.

6 Q And would it then be, Ms. Frates, the likelihood is
7 you probably never really read that to that detail to
8 appreciate there was going to be a lightning rod?

9 A I would probably agree with that assessment.

10 Q Okay. And if you look at the little illustration
11 that's on this document where you see the tower, so to
12 speak, the piping of the tower and then the little thin
13 line that comes out of the top of that. For you, your
14 experience, you wouldn't know whether that's a lightning
15 rod or not. Is that what you're telling us?

16 A That's correct.

17 Q That's true?

18 A That's true.

19 Q Okay. You would leave that to people who know that
20 sort of thing, I take it?

21 A Yes, sir.

22 MR. DREYER: Okay. All right. That's all I got for
23 you. Thank you.

24

25 (Break taken.)

1
2 MR. COLEMAN: Oh, I don't have any questions. Thank
3 you.

4
5 EXAMINATION BY MR. PARDO DE ZELA

6
7 BY MR. PARDO DE ZELA: My name is
8 Julian Pardo De Zela. I represent Bouldin Farming
9 Company. I just have a few questions for you.

10 A Okay.

11 Q You testified earlier that you visited the Webb
12 Tract on one occasion; is that correct?

13 A That's correct.

14 Q And on that occasion, you met Jonathan Winther; is
15 that correct?

16 A I believe it was Winther. The person we met was on
17 Bouldin. And there was a shop, a farming shop there, and
18 he was introduced to me as the farmer.

19 So I believe it was an older guy.

20 Q Can you give me any more description of what he
21 looked like?

22 A I don't remember.

23 Q And who introduced you to this gentleman?

24 A Jim James.

25 Q And did you actually speak to this gentleman that

1 you believe may have been Mr. Winther?

2 A Yeah. It was -- we were just introduced. I mean,
3 sort of "hi," "how are you," "nice to meet you."

4 Q Anything beyond that?

5 A No, sir.

6 Q Did you see the gentleman speak to anyone else that
7 you were with?

8 A He met Rich Simon and Doug Boxer who were along with
9 us as well, but the same kind of interaction.

10 Q Did you hear any communications between the
11 gentleman that you believed to be Mr. Winther and anyone
12 else about the placement of the met tower?

13 A No.

14 MR. PARDO DE ZELA: That's all I have. Thank you.

15 MS. KNUDTSON: I am going to pass.

16

17 EXAMINATION BY MR. BRASCH

18

19 BY MR. BRASCH: My name is Terence Brasch; I
20 represent Echelon Environmental Energy and Adam Smith.

21 A Okay.

22 Q You testified you never directly communicated with
23 Mr. Smith.

24 A Not that I'm aware of.

25 Q Do you know who was the first person at RRG to

1 communicate with Mr. Smith?

2 A I believe it was Mike Kaschak, but I couldn't tell
3 you for certain.

4 Q Okay. Do you know when that was?

5 A I do not.

6 Q Did you -- you might have testified to this; if it's
7 redundant, I apologize.

8 Do you know where RRG found out about or got the
9 name Adam Smith or Echelon Environmental?

10 A Yes. From Rich Simon.

11 Q From Rich Simon. I Just have a couple of more.

12 Do you know whether anybody at RRG ever informed
13 Mr. Smith that farming sometimes occurred on portions of
14 Webb Tract?

15 A I do not, no.

16 Q Do you know whether anybody else involved in the
17 projects so informed Mr. Smith?

18 A I don't know.

19 Q Do you know whether anyone from RRG inquired of
20 Mr. Smith as to a recommendation for lights on the mets?

21 A I don't know.

22 Q Same question regarding orange marker balls?

23 A I don't know.

24 Q Same question regarding painting on the tower?

25 A I don't know.

1 Q Do you have any reason to believe that the tower was
2 not installed pursuant to specifications?

3 A I don't have any knowledge of it one way or the
4 other.

5 Q Did Rich Simon ever communicate to you anything
6 regarding the necessity of a lightning rod or grounding
7 system to protect the electronics on the met?

8 A Not that I recall. There was discussion about
9 moving the electronics up so it wouldn't be flooded. But
10 that was the only discussion I remember. Having them high
11 enough, like nine feet off the ground, so they wouldn't be
12 flooded.

13 Q Did Rich Simon give you any recommendations
14 regarding lighting?

15 A Not that I remember, no.

16 Q Did he give you any recommendations regarding orange
17 marker balls?

18 A No.

19 Q Did he give you any recommendations regarding
20 whether or not the towers needed to be painted?

21 A No.

22 Q Did Rich Simon ever tell you that those were
23 considerations to be discussed with another consultant?

24 A No.

25 MR. BRASCH: That's all I have. Thank you.

EXAMINATION BY MS. KNUDTSON

MS. KNUDTSON: Hi. I'm Gigi Knudtson, I represent
PDC.

A Okay.

Q I real only have one question. There's been
testimony in this case that Webb Tract, the fields were
fallow in the latter part or last half of 2008 and into
2009.

Do you have any information about that?

A I don't.

MR. DREYER: I'd object to the term "fallow" and
whether this witness has any knowledge of what that term
even means.

Q BY MS. KNUDTSON: Do you know what the term "fallow"
means?

A Yes, I do.

Q Okay. And you don't have any information either
way?

A Yes, that's correct.

MS. KNUDTSON: Okay. That's all I have.

FURTHER EXAMINATION BY MR. DREYER

Q BY MR. DREYER: What does "fallow" mean?

1 A Fallow is when you leave a field for a period of
2 time to rejuvenate before you replant it again. And it's
3 usually in a crop rotation.

4 Q When you were out there, did the field appear to be
5 fallow, or do you remember?

6 A I couldn't tell you the difference between grassland
7 and a fallow field in some cases.

8 Q And you would agree that if a field is fallow or
9 grass, that doesn't mean it's going to stay that way in an
10 agricultural area. True?

11 A Yes.

12 Q Okay. I'm going to show you some documents that you
13 reviewed before the depo. And I'm not going to mark this.

14 It's 1409 through 1411, and it's a letter from
15 Swiller to McGovern, relative to problems you guys were
16 having with Kennedy/Jenks.

17 Do you recognize that handwriting on that document?

18 A I do not.

19 Q There's some guy scribbling on all your documents.

20 A Sorry. It's not mine, and that's all I can tell
21 you.

22 Q Do you know how -- do you know what Charlie
23 Stringer's handwriting looks like?

24 A I don't think I do. Nobody uses handwriting any
25 longer.

1 Q Well, that's not really true. Okay. Thank you.
2 I'm looking at a document that you saw that's dated
3 October 9th, 2010. It's -- just for anybody's interest,
4 it's 1046. And this appears to be the final interconnect
5 feasibility study from Power Engineers. That's the report
6 that you were talking about when they reported back to you
7 concerning their findings.

8 A Right.

9 Q Okay. And the date of that you saw on the review
10 was August OF 2010?

11 A Yeah.

12 Q Okay. So you would have communicated this
13 information to your brother. Right?

14 A Yes.

15 MR. DREYER: Okay. All right. That's all I got for
16 you.

17 MS. VAN DER PUTTEN: I do have a question now.

18

19 EXAMINATION BY MS. VAN DER PUTTEN

20

21 BY MS. VAN DER PUTTEN: My name is Crystal Van Der
22 Putten, if you didn't catch it before, and I represent
23 NRG.

24 A Okay.

25 Q And I just have a few questions about Rich Simon.

1 Did Mr. Simon, in relation to the met tower on Webb
2 Tract, give any recommendations to you about the placement
3 of the anemometers that were going to be on the met tower?

4 A Not that I remember.

5 Q Okay. Did you have an understanding, we'll say back
6 in 2007 through 2010 when this was getting installed and
7 this process was taking place, that the anemometer could
8 be placed at different heights on the met tower?

9 A I did have an understanding, yes.

10 Q Do you know if Mr. Simon then made any
11 recommendations about where those anemometers should be
12 placed?

13 A I believe we relied on his advice for that, yes.

14 Q Okay. So it's your recollection that the placement
15 of the anemometers would have come from Mr. Simon?

16 A Like I said, I don't have a lot of recollection
17 about any specific conversations, but yes.

18 Q All right. So based on his role as a consultant for
19 RRG in relation to this met tower project on Webb Tract,
20 you believe that he would have been the one to provide
21 specifications regarding the placement of the anemometers
22 on the met towers. Is that accurate?

23 A Yes.

24 Q Do you have any recollection of whether he told you
25 or recommended to you or RRG that the anemometers be

1 placed at the top of the tower, midway, as high as
2 possible, anything of that nature?

3 A I don't.

4 MS. VAN DER PUTTEN: Okay. Thank you so much.

5
6 FURTHER EXAMINATION BY MR. DREYER

7
8 BY MR. DREYER: One last question.

9 A Yes, sir.

10 Q Do you remember, we talked earlier about this
11 Mr. Winther. Did you ever hear anything about concern
12 that people within RRG, and specifically Mr. James, had
13 that Mr. Winther would be adverse to the effort to even
14 evaluate this for wind?

15 A There was an e-mail that I read about birds that
16 he -- I believe he's a hunter and the bird issue may come
17 up. It comes up with every wind project. So my
18 understanding is we just needed to address that issue.

19 Q Okay. And I -- your answer causes me a little
20 concern in that you are referencing it to what you read.

21 I'm asking whether you had any knowledge before
22 reading these documents that there was this issue with
23 Mr. Winther, potentially.

24 A No. Before reading these documents, no.

25 MR. DREYER: Okay. All right. That's all I got.

WITNESS' CHANGES OR CORRECTIONS

NOTE: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

Deposition of: LLOYDS FRATES
Case Title: Allen v NRG, et al.,
Date of Deposition: May 29, 2014

I, _____, have the following corrections to make to my deposition.

Page	Line	Change, Add, Delete
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1 Pursuant to Section 2025 of the Code of Civil Procedure of
2
3 the State of California, I hereby certify that I have read
4 my deposition transcript, made those changes and
5 corrections that I deem necessary, and approve the same as
6 now true and correct.

7 Dated this _____ day of _____, 2014.

8
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11
12 _____
13 LLOYD FRATES
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REPORTER'S CERTIFICATE

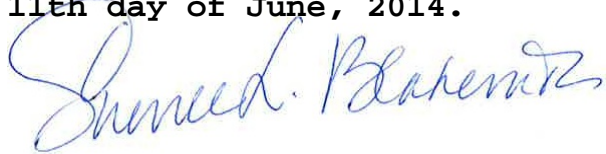
I hereby certify the witness in the foregoing
deposition,

LLOYDS FRATES

was duly sworn by me to testify the truth, the whole
truth, and nothing but the truth in the within-entitled
cause; said deposition was taken at the time and place
herein named; the testimony of said witness was reported
by me, a duly Certified Shorthand Reporter and
disinterested person, and was thereafter transcribed into
typewriting.

I further certify I am not of counsel or attorney
for either or any of the parties to said deposition, nor
in any way interested in the outcome of the cause named in
said caption.

Dated and signed this 11th day of June, 2014.



SHERREE L. BLAKEMORE
Certified Shorthand Reporter
CSR NO. 7144

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June 11, 2014

Lloys Frates
C/O DONAHUE DAVIES LLP
Attorneys at Law
P.O. Box 277010
Sacramento, CA 95827
ATTN: James Donahue, Esq.

Reference No.17462-1737

Dear Ms. Frates:

The original transcript of your deposition in the above captioned matter, taken on May 29, 2014, is now prepared and filed in our offices.

If you wish to review your deposition transcript and sign it, please contact us. You have 35 days from the receipt of this letter to review and make changes to your deposition.

If you do not wish to review your deposition, please sign in the space provided below and return this letter to us.

Very truly yours,



SHERREE L. BLAKEMORE, CSR #7144

cc: All Counsel

LLOYD FRATES

Date

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DATE:
REF. NO:17462-1737

DREYER, BABICH, BUCCOLA,
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Attorneys at Law
20 Bicentennial Circle
Sacramento, California 95826
ATTN: ROGER A. DREYER Esq.

IN RE: Allen v NRG, et al.,
DEPOSITION DATE: May 29, 2014
DEPOSITION OF: LLOYD FRATES

Dear Mr. Dreyer,

With regard to the original transcript of the
above-referenced matter, the following action has been
taken:

- () The sealed original transcript is being forwarded
to your offices.
- () The witness declined to read his/her transcript
- () The witness has read and signed the transcript
- () The witness has submitted the attached changes
- () Our office has no record of the witness viewing
the deposition
- () See attached

SINCERELY,

Royal Reporting Services, Inc.

ENCLOSURE

cc: All counsel

<hr/>	1411 173:14	200 24:20 26:8,12, 22 27:2,8,9,10,12 59:20,24 130:10,16, 23 131:4,6,17,25 132:1,14 162:2	32 122:15	<hr/>
\$	14th 119:16		33 122:16,24	<hr/> 7 <hr/>
\$1,250 149:25 150:5	15 119:15		39 116:5 124:17	7 119:5
\$1,500 149:24	1525 144:19		<hr/> 4 <hr/>	7' 166:21,22
\$30,000 155:5	15th 150:15	200-feet 162:14,17 163:25		7144 5:15 179:22
\$5,000 150:5	16 154:18	200-foot 26:15	4- 42:25 43:19	752 115:7
\$70,000 77:11	17 154:20	2002 11:4	40 97:8 124:18	754 115:14
<hr/>	170- 139:19	2003 11:24 12:9 13:19 14:8,11 16:19 32:23 36:13	41 128:4	755 115:7
-	172 114:2,4		42 128:17	78 139:19
<hr/>	173 132:24	2007 40:20 45:1,21 46:2 48:5 49:12 119:16 164:20 175:6	43 129:16	785 127:22
---o0o--- 5:22	174 135:1		44 132:20	787 127:23
<hr/>	175 135:5	2008 17:20 18:2,11, 15,25 19:5,8,17 20:21 22:11 24:12, 17, 27:18 39:16 40:20 45:1,21 46:2 49:12 62:5 63:11 114:8 116:23 133:2 137:22 139:9 164:10,12,13,18,22 172:8	45 137:14 139:13 141:4	7th 149:6
0	177 139:4,21		47 137:21	<hr/> 8 <hr/>
03 12:13	178 139:21,22		49 140:14	8th 149:23
07 44:17 53:7 61:10 122:22	179 139:20		4th 11:22	<hr/> 9 <hr/>
08 44:18 53:7 61:10 114:14,17 117:20 122:22 125:19 135:23	1798 140:2		<hr/> 5 <hr/>	96 153:22
09 87:2,6 140:20 144:5	18 12:15	2009 140:15 148:23,24 172:9	5 118:21	99 12:10
<hr/>	181 142:11	201 147:7	50 16:7 97:8	9:12 5:12
1	182 143:11	2010 90:19 91:14 93:9 145:7 149:6 151:1,6,12 174:3,10 175:6	500 42:25 43:19	9th 124:21 174:3
<hr/>	183 143:21,22		53 144:23	<hr/> A <hr/>
1	184 144:4	2011 6:8 29:21 30:3 67:9 82:7 115:11	<hr/> 6 <hr/>	a.m. 5:12
1 5:13 151:6	187 59:21		60-meter 99:11 145:20 160:10,20 162:2 163:22 166:15	ability 7:17 79:15, 17 88:9
1' 166:21	189 149:5	2014 5:11 178:7 179:19	60-meter-tall 96:21	absolutely 90:14 143:13
10 91:14	191 151:3	2025 178:1	60-meters 96:22 97:7 131:5 160:20, 22	academia 33:6,7
100 15:15	195 134:14	24th 133:2 134:14	601 125:13	access 53:9 97:18 102:25 159:17
1046 174:4	1966 11:22	26 121:12	62 160:22	accident 9:22 31:7 51:20 54:9 67:7 91:10 110:15
111 154:2,3	197 131:17 144:14 161:9 162:2	275 149:10	68,000-acre 64:17	accidentally 122:6
112 154:8,9	197-feet 131:5	29 5:11 177:7	6th 140:15	accompanied 97:22
113 154:10	1975 152:14	<hr/> 3 <hr/>		accurate 92:8 163:17 175:22
114 154:14	1988 11:20	3,000 64:18		
115 154:16	1994 11:13	31st 137:22		
118 155:8	1A 117:11,12,16			
11th 114:8 179:19	1B 117:13,17			
120 155:15,16	1st 139:20			
123 155:18	<hr/> 2 <hr/>			
1409 173:14	2' 166:22			

achieve 35:8	advocating 22:5, 18	54:19 57:2,14 69:25 70:21 94:8,17 95:11 115:17 153:14 177:6	61:2,4 78:17 79:20 101:11,25 102:16 106:9 120:13 126:20 128:22 134:2	69:17,18 119:23
acquired 29:23	affected 153:4			arm 65:9
acres 64:18	affiliated 11:23 23:13 80:24	Allen's 30:4 82:8 152:19	applications 18:4 38:12 79:22,25 101:16,21 111:6 119:12 144:6 156:25	arranged 41:5
act 110:1	affiliation 23:10	alternating 98:11 115:25		articulate 95:15 99:13
acted 109:22	African 11:9	ambiguous 57:10 117:23 125:24 126:15	apply 59:25	asks 36:23 37:6
action 14:24	ag 34:22 109:10	amount 83:21	approach 62:17,18	aspect 28:10 66:2 75:13 102:24
active 74:12	agencies 156:24	analysis 82:22 152:21	approval 73:20 75:2 78:14,22 84:8 113:7 130:9	aspects 19:12 20:9 38:6,7 100:21
activity 46:18 117:25	agency 29:5	analyze 88:5	approve 178:5	assess 83:11
actual 16:5 23:16 41:5 56:9 61:17 69:4 76:19 81:14 88:13 107:1 120:21 121:17 122:12 148:3 159:8 163:7	agent 45:6	analyzing 68:25	approved 38:12 77:13,15 79:1 102:13 121:11 159:10	assessed 157:17
Adam 68:2,4 69:5 70:14 99:25 105:18 109:6,16 113:3 139:24 140:19 143:7 169:20 170:9	agree 20:20 23:15 73:20,22,23 117:5,7 126:25 131:16 167:9 173:8	and/or 68:18	approximately 90:20	assessing 22:25 33:16 111:25
add 177:3,4,10	agricultural 13:4 15:8, 16:10 17:11, 17 18:23 19:2,6,12 20:1,3,15,22 21:3 34:10 44:13 56:20 57:3 58:22 61:12,15 65:21 99:15,19 109:2,20 117:22,25 124:11 134:10 164:5,6 173:10	anemometer 93:10 175:7	appurtenance 107:8	assessment 71:18 82:21 89:2,23,25 167:9
adding 177:3	agriculturally 134:9	anemometers 92:23 145:20 146:23 175:3,11,15, 21,25	April 87:1,6 90:19 91:13,14 92:15 140:22 148:24 149:11 150:15	asset 64:20 65:5
addition 10:8	agriculture 34:12 44:9 118:2	Angeles 65:8	April-ish 145:7	assigned 69:10 81:23 91:5 103:17 114:23
additional 82:2 143:3	ahead 65:2 114:5 117:24 125:25 151:16	anniversary 145:6,8	area 44:8,15,16,23 47:4,7,9,10 56:1,4, 5,9,12,18 57:25 58:19,22,24 64:22 65:5 74:12,21 99:14,20 109:2 118:7 123:2,5 126:6,13 127:15 134:8 147:13 159:7 173:10	assigning 33:17
address 111:10 120:16 123:11 124:12 140:9 176:18	ahold 151:9,12,15	Antelope 36:19 38:2 127:5		assignment 44:25 82:2
addressed 116:13 117:4 129:17 138:5 140:4 142:13	aid 111:18	anticipation 78:21		assignments 36:10
addressing 105:19 126:9,11 134:17 135:18	air 16:2 28:4 118:6 147:21	anybody's 58:9 174:3		assist 61:23
adjacent 42:18 48:12	aircraft 122:4	apologize 37:2 170:7		assisted 10:14
Administration 24:10	airplanes 28:5	apparently 96:23 130:12 138:20 146:19 147:9		Associates 67:5 70:9,15 109:16
admonitions 6:15, 17 7:12	airport 24:13	appeared 5:15 59:13	areas 16:10 73:24 74:22 98:25	assume 9:15 52:6 70:23 108:2,16 134:7 141:9,15 142:13
adverse 176:13	airports 14:22	appears 129:21 133:15 134:16 146:20 152:14 154:22 155:24 174:4	Argentina 138:21	assumed 66:7 159:10
advice 175:13	airstrip 118:12	appendix 115:24	argumentative 57:9 74:6 127:17	assumes 86:3 151:14 161:2
advocacy 66:24	airstrips 118:7	application 59:9 11,15,16 60:5,6,18	Ari 10:10 12:4 32:12,18 33:7 36:6 60:21 62:8,10,25 63:2,3,17,20 65:12 66:9 68:12,18	assuming 103:16 145:10 161:3
	Allen 5:4 6:8 25:20, 25 27:24 39:17,18, 19,21,23 49:17 51:8			assumption 131:12
				assumptions 159:12

assuring 8:3,6		benefit 49:6	break 10:22 90:12, 16 167:25	buildings 27:23
attach 166:25	B	bet 138:24	Brent 67:24 128:6, 7 134:22 143:5,7	built 87:1 91:3
attached 10:7 107:8 114:12	BA 11:15	bid 138:1	Briar 11:16	bulk 65:1
attaching 129:5	back 6:8 10:18 25:24 35:19 49:16 68:1 69:17 71:18 73:17 74:20 77:10 78:5,12 90:18 91:8 93:9 103:4 116:23 125:2 138:20 150:17 159:2 174:6 175:5	bigger 88:11	bright 66:14, 140:25	bunch 144:20
attachments 10:6		binder 116:5	bring 12:22 13:2 33:11 67:22 68:10, 18 69:11,12,15 126:7	business 12:24 17:10 20:9 35:4,10 36:2 70:9 106:22 107:12
attention 47:11 80:5 113:23 121:21 140:17 145:19		biomass 13:11		C
attorney 41:19 57:5 179:15	background 33:5 34:2 37:24 66:12,24 112:25 117:10 130:21	bird 176:16	bringing 32:22 48:24 123:20 130:15	cable 140:24
attorneys 104:17	bad 162:19,20 163:6	birds 176:15	brochure 97:15,19, 21	calculated 26:16, 22
August 11:22 139:20 147:15 174:10	Ballpark 82:6	birth 11:21	brother 25:5 32:7 33:2 34:16 35:4,16 36:5,6 37:17 45:10, 22 46:10 48:16,17 52:8 62:12 64:11 65:12,14 75:4,8,12 78:6,12 94:20 95:8, 15 101:20 112:4 119:23 120:22 127:7,10,14 132:18 136:16 148:18 153:7,15,17 158:7, 14 163:16 174:13	calculation 107:9
authoring 157:8	balls 97:24 100:7 104:10,11,13 106:2 141:25 142:1,4,6,8, 10 170:22 171:17	black 163:6	brother's 48:3 119:2 141:16,17 144:2,3	calendar 165:10
authority 63:4	bank 20:19 36:16 38:3	blah 134:22	brought 32:11,25 38:4,14 47:11 69:3, 19 80:5 138:20 142:8	California 5:1,13 14:23 142:19 178:3
authorize 95:6	Barajas 54:2,5	BLAKEMORE 5:14 179:21	budget 12:25 75:23,25 76:19 77:9 78:16 103:12,20,24 104:3 113:11 149:9, 13,17 150:5	call 33:15,25 89:8 108:25 130:13 137:2
AV 36:16,18,20 120:7 127:11 142:20	barrier 67:8	blinking 27:22 28:9	budgetary 113:6 150:9	called 5:19 20:17 22:12 54:7 65:2,7 71:11 107:2,4 157:14
availability 71:12 96:10 128:11	based 56:15 65:7 76:1 83:24 93:3,5 96:6 97:1 100:14 130:18 136:3 175:18	blow 147:14	building 28:1 69:2, 6 78:17 121:4	calling 116:21
aviation 13:20,21 24:10	basic 44:21	Blythe 82:3		Calls 131:11
aviator 19:3 28:17	basically 35:12	board 22:7,14		capable 33:17 66:18
aviators 15:9,15 24:16 99:19 101:9 109:10,20 134:10 164:6	Bates 140:1	boss 32:15		capacity 17:17,18 31:16 37:10 58:13 60:23 81:15 153:19
Avila 133:17,18 134:1	beat 149:8	bosses 36:6,9		caption 179:18
avoid 104:2,7	began 23:14	bottles 113:17		carbon 49:4,6 81:12 119:25
aware 15:22,23 24:18,22 25:21 30:4 48:13 54:6,12,17 55:4 60:16 66:20 69:24 70:1,3,4 71:2 81:22 95:5,8 98:9 102:18 109:5 110:6, 9,24 111:2,22 113:1 117:19,21,25 118:10,15 124:16 146:22 148:21 155:17 159:5 161:25 169:24	begin 9:2	bottom 149:5 156:1 166:21		cards 150:17,20
	beginning 12:20 47:14 63:23	bought 42:5 64:24, 25		career 38:17
	behalf 59:14	Bouldin 40:8,9,11 46:18 53:20,24 54:7,14,15,21 61:15 68:8 72:2 118:7,13 124:15 128:22 129:20 142:2 168:8, 17		carefully 84:4
	believed 169:11	box 41:24 103:8 166:17		Carlson 114:8
	bell 136:23,24	Boxer 40:16 49:2,3 53:16 71:23 72:8 81:11 119:23 169:8		Carmanah 125:9
	beneficial 97:10	Braffman 80:8,10, 11		carrot 20:16
		Brasch 61:1,8 151:14,24 152:7 169:17,19 171:25		carrying 159:23
				case 8:1 12:9 32:19

81:8 135:15 138:14 172:7 177:6	Civil 178:1	122:5	48:15,23 123:22	22 107:12 108:6,9, 14,20,24,25 109:15 121:5 161:19 163:20
cases 13:5 173:7	clarify 91:16	committed 114:18	126:5 132:14	
catch 174:22	class 111:18	common 28:14	136:20 147:23	
cattle 65:23	clean 7:7	109:25 111:17,20 130:21	150:8 158:25 162:13	consult 12:17
CERTIFICATE 179:1	clear 140:1 144:13 146:17	communicate 6:25 56:22 60:7 74:3 77:5 84:13 99:22 109:3,10 114:13 123:12 147:1,3 150:7 170:1 171:5	concern 103:20 176:11,20	consultant 12:14, 17 24:24 36:16 37:14 41:8 48:25 85:4 107:16 108:10 119:21 120:8 146:7 171:23 175:18
certification 126:23	close 16:21 118:12 131:7,17	communicated 73:14 78:12 100:19 109:7,17 169:22 174:12	concerned 49:15 100:3 118:11	consultants 10:11 21:7 23:22,24 24:23 59:10 60:12 61:24 76:2 79:24 80:2 89:1 102:12 156:14 162:9
Certified 5:14 179:12,22	clue 73:24	communicating 147:2	concerns 120:11	
certify 179:3,15	co-founded 32:14	communication 7:6 71:9	conclusion 51:10	
cetera 72:19 76:5 78:20	Coachella 98:24	communications 50:25 54:10 99:24 169:10	conditioners 147:21	
chain 148:17	coalesced 91:20	community 120:15	Conditions 130:8	
chance 149:23	coast 71:11	companies 38:1	conduct 163:2	
change 37:13 177:10	Code 178:1	company 30:6 31:24 33:8 34:13,14 38:2 39:3,8,9,11 67:6 70:24 84:2, 168:9	conduit 83:16	consulted 64:9 69:19
characterized 45:15	Cole 7:9 32:4,7,14, 18 33:2,7 34:1 35:25 41:21 48:9 52:7,22,23 58:5 60:17 62:8,10 63:5, 17,20 68:12,18 69:16,17 77:2,3,4 78:7,8 84:11,13,16, 17,19 86:13 88:4 139:25 143:2 147:1, 3	compared 111:6	conference 138:22	consulting 37:10 38:1,2 108:18
charge 40:25 41:3, 9 45:2,9,22 49:6 103:11	COLEMAN 74:6 126:16 140:1 168:2	compare 111:6	confident 6:19 110:2	contact 50:24 52:17,20,22,23 58:9 68:15 69:5,7,8 75:7 83:18 90:3 120:7 135:3 148:15,17,18
Charlie 153:8,11 173:22	collaborative 72:15	compelled 131:14	connected 39:7	consensus 89:17, 19
chart 161:5	colleague 153:13	compile 59:10	Conservation 155:6	contacted 96:5 99:4
check 41:23 103:7, 8,9 107:23	collected 82:15,17	compiled 156:10	consideration 123:14 156:24	contacting 120:6
checkboxes 103:7	collection 164:10	complete 127:14	considerations 113:6 171:23	contacts 32:4 52:25
checked 97:11	College 11:16	completely 26:3	considered 74:14 80:22 100:23 107:7 147:17	content 117:5
checking 96:9	color 44:5	Compliance 115:16	considers 165:17	context 15:12 23:20
chemical 18:4	colors 98:4,5,10,18 116:1	complicated 33:19	consistent 12:19 134:18,20 137:7 147:16 150:1	continuing 104:24
chemicals 14:19 15:9,18 16:1,2	column 155:4	complied 20:13 103:12	constantly 6:16	Contra 5:2 58:19 102:20 103:3 111:1 118:25 133:7,12,13, 21 135:3,11, 137:25 165:1
Chippis 50:1	comfortable 16:23	comply 166:3	construct 75:16	contract 12:10,13 128:5 134:21
choice 84:10 132:3 136:22	commencing 5:11	compressed 113:10	constructed 104:25 108:23	contractor's 69:23 70:1
chronological 113:20	comment 7:20,21 9:1	concept 25:7 47:24	constructing 61:18	convenience 138:4
chronology 78:15	commercial 13:22		construction 38:11 42:2,6 43:9 61:4 67:22 101:21 105:18 106:10,19,	conventional 34:23
CIM 65:7				
city 14:4 65:2				

conversation 46:13 71:6,8 73:16 101:22 103:23,25 104:4,9,12 123:18 129:8 132:16 136:7, 14 151:25 152:3,8 158:13	counsel 70:11 124:18 179:15	149:2 150:21 164:10 165:16	12,15 76:22 77:6 83:9,24 84:3,10 85:7,22 86:4,7 88:12 90:23,25 91:20 92:1,3,21 93:24 94:5,15,24 95:16,24 123:25 165:7,8	deny 136:5,6
conversations 39:13 103:22 104:6 106:24 175:17	count 9:6	data-gathering 92:22	decisionmaking 37:19 46:8 81:17	department 83:4 128:25 155:5
convey 75:9	counties 78:22 79:5,9,21 102:17 121:19 131:8	date 11:21 15:2 67:11 139:3 174:9 177:7	decisions 83:17 86:9	depends 158:20
coordinates 72:25 73:4	county 5:2 58:19 59:7,13 60:7 64:18 78:25 79:24 80:1 87:14 102:20 103:1 105:4,5,11 110:7 111:3,4,8,11 118:25 119:13 121:23 122:1 133:21 134:1 136:17 137:11 163:12,13 165:1,21, 25 166:3	dated 119:16 164:13 174:2 178:7 179:19	deeds 52:18	depo 173:13
copied 31:5 112:15 119:24 139:4	couple 6:21 92:5 170:11	dates 51:4 82:9	deem 178:5	deposition 6:13 25:5 41:17 45:13,19 133:23 177:6,7,8 179:4,10,16
copy 119:23 163:6	court 5:1 6:23	Dave 52:10,12,24 81:2,3 116:19 147:8	default 132:5	depositions 6:16
corn 58:24,25 118:4 159:23 160:3	courtroom 7:16	Davies 5:13	Defendant(s) 5:9	Der 174:17,19,21 176:4
correct 14:13,14 17:11 21:16 23:11 30:10,15 45:16 46:6 65:18 67:19 71:16 73:5 75:19 81:16 87:6 102:9,14 108:22 114:17 118:18,19 119:3,21 124:4 130:25 136:8 140:3 144:25 145:12 148:23 151:20 153:5 160:12 161:7, 167:16 168:12,13, 15 172:20 178:6	create 12:24	day 10:3 149:23 178:7 179:19	degree 11:14	derivations 155:24
corrections 177:1, 8 178:5	creation 156:5,9	day-to-day 20:22 21:2,11,13 63:22 66:1,5	delay 164:25	describe 64:16 72:12
correctly 143:13	credentials 69:18	De 168:5,7,8 169:14	delayed 150:23	description 67:3 155:20 160:9 168:20
correspondence 54:13 143:14	Credit 80:21,24	deal 17:10 48:1 54:21 61:19 64:21 68:22	delete 177:4,10	descriptions 55:17
cost 75:18,22 76:9 94:16 95:25 105:6, 7,12,20 106:5 116:25 117:4 124:22 125:4,7	critical 157:11	dealing 22:22 31:1 38:8 78:22 86:16 91:5 112:21 119:7 125:11,18 129:20 135:11,24 139:7,15 144:6 148:12 150:2, 9	deleting 177:4	Desert 82:7
Costa 5:2 58:19 102:20 103:3 111:1 118:25 133:7,12,13, 21 135:3,11, 137:25 165:1	crop 14:15,17,24 15:2,22 16:9,19 17:16,23,25 18:3, 12,14,23 118:10 125:11,18,21 126:5, 12 173:3	dealings 24:11	deliver 77:2	designated 41:1
costs 105:9 121:3 137:16 143:6	Crosby 130:13	deals 128:21	delivered 92:15	desire 35:2 101:3 146:15
	Cross 111:18	dealt 22:20 50:23 86:17 128:6	Delta 29:16,19 31:10,12,14,17,19 32:3 35:19,20,24 38:18,19 39:1,4,14, 21 41:4,15 45:6,23 51:3,23 52:2,5,20 53:2 69:1 73:8,18, 21 74:2 75:3,15 76:24 77:1,5,12,15, 23 78:1,5,15 79:3 80:15,16 83:3 84:7 85:8,14,25 89:10 94:20,23 95:5,16,23 109:8,12 113:10 117:14 118:10,17 120:1,22 121:6 123:12 130:6 145:3 148:12,15 149:19 152:20 155:19 157:6,7 158:4	detail 88:9 167:7
	Crystal 174:21	death 25:21 30:4 82:8 152:19,22,23, 25 153:14	demand 147:18	detailed 8:25 51:18 89:20
	CSR 179:22	December 119:16	demanding 148:7	details 33:20 76:11
	cultivated 55:24	decide 56:18 87:20 94:2	Dennis 114:8	determination 72:22 94:9 95:6 165:18
	D	decided 68:21 88:10 94:3,20 95:21		determine 40:17 41:13 44:19 50:13 55:10 58:15 69:10, 13 73:1 111:7
	data 82:10,15,17 83:21,22 86:15,23 87:6,23 88:5,7,15 89:1 90:21,24 91:13,23 92:4,15 123:23 146:1 148:4	deciding 123:14		determined 86:24 165:11
		decision 37:16 46:5 64:7,10,13 67:21 68:10 69:11,		determining 33:22
				develop 23:20 34:19,20 35:9 47:1 48:24
				developed 31:13 38:3 55:19 65:3,13
				developing 13:6 22:17,25 31:17

34:22 37:25 45:3 48:6 77:9	161:21 171:8,10	Dreyer 6:1,3,6 7:9, 16:15 17:8 18:19,22 36:20,23 41:18,21 57:13,18 61:5,9 72:4 74:7 85:11 86:5 90:14,18 114:3 117:24 123:8,10,19 125:25 126:3,5, 127:18 131:3,16,20 132:25 139:18 140:3 143:22 144:1 151:16 152:2,9 153:23 154:1 155:15 161:3 167:22 172:12,23, 25 174:15 176:6,8, 25	144:24 145:17 147:9 149:6,7,14 150:4,14 151:6 176:15	117:21
development 34:8 119:25	disinterested 179:13			energy 13:6,8 21:24,25 22:17,18 23:9,17 34:3,10,12, 22,23 35:13 44:20 47:21 48:7 50:13,14 51:11 138:24 169:20
device 92:22	disked 123:3		e-mails 9:20 10:5, 6,7 75:23 93:21 121:7	
devices 24:16 100:21	distance 16:22		earlier 62:11 94:23 96:11 128:24 129:11 134:24 149:1 168:11 176:10	engage 89:19
diagram 135:16	distinction 8:17 25:11			engaged 142:25 150:8
died 7:25 30:24	docs 118:17			engineering 50:17 90:4 137:15
difference 7:20 102:19 143:7 173:6	doctorate 10:25 11:5 33:4		early 92:19 151:9	Engineers 50:17, 19,21 51:6 89:20,24 90:9 91:6 174:5
differences 102:16,18,19	document 60:1,3 102:12 114:1,10,13 115:14,18,23 116:2, 4 119:8 124:24 127:23,25 128:23 132:22 133:2,4,6 136:4,5 137:19 138:15,16,19 139:13,23 140:19, 24 141:7 144:15,20 155:18,19,25 156:2, 5,10 161:5 163:11, 17,23 166:14,25 167:11 173:17 174:2	driveway 128:25	easier 158:16	
difficult 43:23 101:5 113:7		drop 15:9	east 71:11	ensure 68:4
diligence 20:25 21:4,6,10 120:8		dropping 16:1	Echelon 24:3 137:15,18 139:14 140:12,15 169:20 170:9	entered 41:17
direct 52:24 62:25 63:4		dual 46:25	edge 56:1	enterprise 83:12
directed 29:7		ducks 50:5	educated 18:12	entire 105:7
direction 109:22 146:14		duly 5:20 179:8,12	education 10:24 112:1	entities 29:16 38:9
directions 110:3		duster 14:15,17,24 15:3 17:24 18:12,23	effect 73:16 121:8	entitled 25:4 155:19
directly 38:21 69:7 112:16 122:2 133:13 140:12 169:22	documents 9:23 10:7 43:13 52:25 60:1 61:20 77:10 81:15 83:7 113:13 116:10 119:6 139:20 173:12,19 176:22,24	dusters 15:22 16:10,19 17:16,25 18:3,14 125:11,19, 21 126:5,12	effort 21:3,6 22:8 51:22 54:15 68:25 72:15 75:16 91:10 105:18 176:13	entity 29:15,16 54:7 58:19 59:5 67:11 70:12
dirt 55:9		dusting 118:10	efforts 14:6 23:20 73:15 80:18	environment 43:24
disagree 117:2	Donahue 5:12 10:22 16:14 17:2 18:17,20 57:8,15 71:24 72:2 74:8 85:9 86:3 90:12 123:7,9,16 126:1, 127:17 131:1,11,18 153:25 155:12 160:25	duties 12:18,19 19:2 81:23	EIR 117:15	environmental 22:1,2 37:24 38:6 49:5 66:24 120:11, 137:15 169:20 170:9
disappeared 114:19,21		DW 129:21 149:8, 13	electrical 21:22 66:21 159:23	environmentally 23:6
discerned 121:18		DWP 83:1,2	electronics 171:7, 9	equal 36:4
discovery 86:5		dying 30:14	eliminate 50:6	erected 30:7 83:15 107:18 109:21 140:22 161:6
discuss 88:5 99:3 112:4,8,19 120:10 126:22 136:10,25 153:14,17	Dorrance 81:2,3,7 147:8,10 148:9,12		employee 11:24 12:5 36:21 37:14	erecting 67:16
discussed 6:20 86:23 88:8 105:13, 14 128:24 130:12 171:23	double-check 126:20	E	end 22:12,14,16 38:17 62:11,12,15 66:13 106:22 107:12 108:6 125:12 148:10 164:9	erection 79:21 109:4
discussing 141:24 142:6 149:12	doubting 128:18	e-mail 31:5 50:25 52:17 54:10,13 71:9 81:7 92:24 93:4,5 112:11,12 114:7,12 116:5,8 119:16,17, 20 130:18 133:15, 17 134:16 135:6,10, 18 136:20 138:5,8, 18 139:5,21 140:7, 9,15 143:12,14	endeavor 20:23	essentially 10:4 12:24 22:5 34:18 35:7 36:6 51:15 56:6 64:4 67:24
discussion 93:12 132:17 135:23	Doug 40:16 49:3 119:23,24,25 169:8			
	draw 117:3 145:18			

106:11	existed 34:22	164:1	Farms 82:7	fine 16:25 17:4 40:22 82:6 143:2
established 56:13 122:19	existing 34:13 51:15	FAA-CERTIFIED 126:19,21	fashion 103:22 113:20 140:8	finished 91:11
estimate 40:23 43:16,19,21	expansion 34:11	FAA-COMPLIANT 115:24	feasibility 174:5	firm 50:18
Estimated 155:5	expectation 7:8,17	facility 157:17	February 140:15, 20	firmly 37:6
et al 5:8 177:6	expense 143:3,4	fact 48:5 56:16 112:5 136:12 142:7 143:10 144:12 145:19 160:22	Federal 24:10	Fischer 41:17,18
evaluate 44:18,20 50:12 84:14,15 94:16 176:14	expensive 143:4	facts 86:3 151:14 161:2	feel 108:19 131:14	fit 33:10 35:15 159:11
evaluated 69:21 86:15 100:23	experience 13:19, 21,23 14:10 18:13 19:23 21:22,24 38:14 48:6 66:19, 20,21 100:12 112:25 127:15 167:14	fair 17:20 18:25 23:4 27:5 28:12,17, 18 67:3 76:16,21 100:2 107:18 127:13 130:3,4 136:15,19 149:20	feet 15:15,25 16:11 17:7 18:4,6,15 24:20 26:8,12,22 27:2,8,9,10,12 42:25 43:19,25 59:20,21,24 130:10, 16,23 131:4,6,17,25 132:1,14 161:9 162:2 171:11	five-page 155:25 156:2,5
evaluating 22:21 48:25	experienced 100:16 129:5	fairly 46:21	felt 30:21 66:10 88:25 118:4	fix 93:13 94:4,15 95:25
evaluation 74:24 84:18	expert 47:21 54:24 71:20 97:3 102:2 112:22 141:9,10 154:23	fall 63:11 127:12	ferry 53:11,12,13, 17	fixed 93:25
event 25:20 95:11	expertise 34:2 38:8 47:25 82:12,13 100:3 111:14 112:1	fallen 139:16	field 16:6,21 17:23 18:5 56:2 173:1,4,7, 8	fixing 94:12,16
events 10:15	experts 21:18	fallow 172:8,12,15, 25 173:1,5,7,8	fields 15:18, 109:19 164:5 172:7	flaking 139:11
eventually 12:21 50:1 64:24	explain 26:21,24 79:4 97:7 99:17 125:20 157:10,13	familiar 14:15 54:3 98:21 100:17 147:22	figure 12:25 34:18 86:5 89:21 94:1 105:6 120:1 163:10 164:16	flashing 28:15 43:5
evidence 86:4 151:15 161:2,4	explaining 85:10	farm 21:7,13 56:17, 19 159:2	figuring 103:15	fleet 15:16
evolved 34:7 68:6	explore 44:23	farmed 55:21,25 56:2 64:19 157:16, 19 159:23 160:3	filled 38:12	flies 14:18
exact 12:11 17:7 18:10 51:4 57:11,13 91:24 177:3,4	exploring 41:15 49:4	farmer 21:12 55:6, 7 56:14 71:19 72:5, 8,10 73:3 168:18	filling 60:17 118:24	floating 162:14
EXAMINATION 6:1 168:5 169:17 172:1,23 174:19 176:6	exposed 25:7	farmers 20:3,16 21:7 54:21 109:3,8	final 33:25 72:22 92:15 124:7 150:18 174:4	flooded 171:9,12
examine 107:1,3	exposure 14:10 48:15	farming 14:3,6, 15:10 17:13 20:22 21:3,5,11 39:24 44:14 54:8,14,15 55:25 56:11 58:10, 24 59:2 66:3 71:20 74:13 99:15 117:21 118:13 123:5 157:25 158:5,20,23 159:18 168:8,17 170:13	financial 64:24 65:6	flown 122:3,6
examined 5:21	extremely 19:18 66:14		find 29:4 35:8 54:22 70:11 78:25 84:21 85:6 110:13 113:9 116:7 124:23 154:7 158:18 159:6	fly 15:9,15,16 16:10,12,13 18:11 57:2
exchange 151:7	eye 16:19 17:25 19:15		finding 33:20 35:15 92:2 93:9 116:24	flying 14:21 50:6 122:8
excuse 129:4			findings 174:7	focus 13:10 142:21
exhibit 114:2 115:6 116:5 118:21 119:5, 15 121:12 122:15 124:17,18,20 127:22 128:4 129:16 132:20,24 135:1,5 137:14,21 139:3,13,19 140:14 143:11 144:4,23 147:7 151:3,4 152:13 153:21	<hr/> F <hr/>			focused 34:8 65:3
	FAA 24:6,12,15,20 25:14,22 26:5,8,11, 18,24 27:3,14 59:24 107:7 115:15 130:22,24 131:7,24 162:3,17 163:25			focusing 34:20 35:12 135:22 138:24
				folks 17:10 46:15 51:21 73:20,23 74:14 89:7 90:22 113:10 115:4 123:10 128:13 136:10,15 142:23
				follow 57:22 130:24 131:13
				Folsom 5:13
				footage 16:5
				football 16:6

for-profit 34:14	functioning 87:22 92:25 146:1	162:20	hand 114:4	height 26:6 43:16 96:24 107:9 115:16 160:14 161:6 163:19 164:5
foregoing 179:3	fundraising 80:18	GPS 72:25 73:4	handling 120:21	
fork 64:19	future 58:16 73:24 123:6,13 124:10,13, 14 158:11	graphic 138:11,12	handwriting 116:7 132:21 141:6,7,9, 10,12,16,17,19,21 143:18,19,24 144:15,20,21 154:5, 8,12,23 155:2,6,8, 11,14 173:17,23,24	heights 24:17 175:8
Forkel 52:10,12,15, 24,25 116:19		graphics 137:23		heirs 6:7
form 82:18		grass 123:3 173:9		helicopter 122:4
formal 112:2	G	grassland 173:6	handwritings 154:22	helicopters 28:6 125:12,19,22 126:6, 12
forms 103:7	gain 53:9 101:12	gray 98:15	happen 8:24 95:12 120:14 158:11 159:7 165:3	helped 59:18 60:7 79:22 80:17 121:25
Forum 138:25	gather 76:9 79:22 121:25 123:23	grazing 44:9 64:22	happened 8:9,10, 15,16 10:19 23:10 32:22 54:9 64:1 74:17 94:9 136:5 152:24 153:4	helpful 10:17 132:9
forward 83:23 85:15,25 86:24 87:20 88:11 92:21 93:13 95:7	gathered 156:13	great 40:22 64:21 114:4,5 148:2		helping 101:12
forwarded 140:8	gave 72:24 75:8 100:15 132:10 163:12	green 22:11,20 35:12 47:25	happening 55:1,4 93:11	Hey 74:11,18 103:23 104:1 105:23 109:1 113:3 120:12 126:8 131:24 159:6
found 30:23 31:4 65:13 131:4 146:25 152:23 170:8	general 76:15	grew 14:4	hard 47:15 93:7 101:9 132:8	hide 101:1
foundation 160:25	generally 22:19 27:18 38:21 44:18 55:4,14 64:1 78:24 86:9 148:10	grid 91:4 127:11	harness 23:9	hierarchy 79:14 83:7,14
frame 12:11 30:3 114:16 117:19 125:2 136:9 139:14 140:20 141:22 145:11	generated 88:20 133:6	ground 71:22 171:11	harnessing 21:24 23:17	high 59:5 147:18 171:10 176:1
framework 31:8	gentleman 39:23 40:2 70:18 168:23, 25 169:6,11	grounding 166:21, 22 171:6	harvesting 46:15	higher 130:23
Francisco 133:18	gentlemen 44:17 166:8	group 10:11 25:6, 13 34:11 39:6 65:7 157:4	hate 6:15	highest 10:23 34:20
Frates 5:17 6:5,6 7:14 12:4 16:16,18 18:3,25 20:20 23:15 27:5 28:13 29:20 30:12 32:4,7,15 35:25 41:21,22 49:15 54:19 57:18, 21 61:10 62:8,10 77:22 86:13 90:19 95:23 100:25 110:6 113:9 122:17 131:24 136:9 139:25 146:22 158:18 160:20 177:6 178:13 179:6	germinated 47:14	grow 67:1	hazard 98:4,10 105:24 111:22	hills 46:20 47:9
free 56:18	gift 138:20	growing 14:10 44:13 159:4	hazards 111:25	hindsight 158:17
friend 153:11	Gigi 172:3	guess 8:12 16:14 17:2,7 25:2 30:12 33:15 85:11,12 103:13,14	head 6:25 17:6	hired 11:25 12:3 21:6 38:2 50:16 59:10 62:7,9 66:3 67:23 79:24 108:10
full 27:14 149:11 150:15	give 6:20 7:6,12 21:2 30:1 43:21 44:25 134:11 168:20 171:13,16, 19 175:2	guessing 16:24 25:3,11 129:16 139:2	health 102:24 103:5 128:25	hiring 21:10
full-time 12:14	giving 40:22 109:1 125:3 142:22 150:12	guy 45:22 47:13 66:25 146:11 154:7 173:19	hear 106:21 169:10 176:11	history 11:2,15 33:5
fully 134:2	glasses 113:16	guys 61:5 62:18 91:14 103:24 128:6 146:12 173:15	heard 27:17,19,20 37:21 52:10 53:22 54:7 57:4 67:6,7,11 70:10,15 118:4 133:18	hold 71:20
	goal 101:8	H	hearing 6:15 138:2,14	holding 165:5
	goals 35:8	habitat 50:2	hearings 79:23	home 9:24
	good 7:7 19:18,19 33:4,10 40:17 41:24 44:22 49:23 50:4,11 66:15 96:24 99:19	half 90:13 172:8	heavily 51:14	honest 136:2
		halfway 129:7		honestly 62:19
				hoped 8:16

hoping 134:21	included 97:4 160:23 163:4 166:12 167:4	initial 50:16	introduced 6:7 52:15 168:18,23 169:2	islands 39:22 40:8, 11 46:19,22 47:6 49:5,7 55:1 108:3
hot 147:20		initially 79:13 80:3		
hour 5:12 90:13	Includes 166:18	inland 55:25	investigation 153:2	issue 27:14 85:6 93:25 102:24 103:5 105:1,19 111:11 112:8 119:18 120:12,16 123:20 124:12 126:22 130:16 134:17,23 139:7,10 141:24 146:23 148:18,19 149:12 150:10 151:11,17 153:9 158:5 176:16,18,22
housed 62:16	including 51:3 94:20	input 130:3 150:12	investing 80:22	
housing 98:25		inquire 123:12	investment 35:17 39:6 65:9	
huge 64:21	increase 28:2	inquired 170:19	investors 35:1,9, 15 48:7 80:19	
human 30:16	increased 140:25	inquiring 99:10	invoices 149:10	
humming 64:3	independent 138:8	install 157:5 160:10 164:9	involve 34:12 102:24	issues 102:20,22 128:24 129:1 149:13,17 150:9 152:4
hundred 16:11 18:4,6,8,14 43:25	individual 50:8 100:16	installation 24:4 42:1 100:4 134:15 141:23 144:6 145:8	involved 14:5 19:6, 9,14,25 20:4 22:7, 25 23:8 26:9 30:6,7, 9,13 31:2,14,17,25 32:2 33:5 35:2,21 37:19 38:20 42:1 46:8 49:2 60:4 61:11,14 62:12 63:13 64:7 67:13, 14,18 68:7 70:12 79:6,11,13 81:10 94:15 101:12 108:25 114:16, 120:25 121:7,24 122:2 133:11 145:10 152:19 153:1 162:18,22 170:16	
hunter 176:16	individuals 29:16	installed 56:4 58:1, 15,20 171:2 175:6		
hypothetically 74:17 133:25 134:7	industry 17:17 21:22 23:4 34:3	installer 67:24 129:5 139:9 150:16 151:8		
<hr/> I <hr/>	inference 117:2	installers 68:2 134:17 139:12		<hr/> J <hr/>
Idaho 90:9	info 147:12	instructed 52:1 68:4		J-e-n-s-e-n 50:22 90:5
idea 34:19 45:3 46:21 47:14 49:5 68:18 71:14 83:20 94:1 160:14	inform 69:22	instruction 52:5		Jaime 54:4
ideas 47:18 76:15	informal 7:16	Insurance 39:7 80:12		James 32:5 35:25 36:1,7,9,12 40:16 41:2 47:12,13 48:17 52:7 53:11,16 58:2 59:11,13 60:11 62:1 63:5,23 68:14 71:23 72:5,16,25 73:7,11, 13,17 75:7 76:12,25 77:3 78:7 79:10 80:7 84:19 86:13 100:20 101:17 102:11 103:13,16 108:2 110:22 112:24 127:6,10 133:17 136:25 166:6 168:24 176:12
identification 127:22	information 33:19 49:21 57:24 58:5,7, 10 59:15 70:9 73:7 74:2,14 76:9 78:4 79:9,22 82:16,24,25 83:16,19 84:5,7,12 85:23 90:20 91:8 92:2 95:20,24 99:22 100:15 101:13 108:24 109:1 111:7, 8 121:22 122:1 123:24 124:3,4,22 125:3 128:1,13 132:10 133:7, 134:11 135:2 144:9 145:3,4 146:11 147:1 148:8 150:25 156:11,13,24 157:18 158:2 159:25 160:6,23 161:13,22 163:11, 19,23 165:14 172:10,18 174:13	intended 161:23		James's 141:19,21 155:10,11,13
identified 65:14 114:10	informed 92:21 94:19 134:3 170:12, 17	intent 136:12,21	involvement 6:11 17:13 20:7 22:16 23:4 24:21 31:19 38:18 39:5 42:4 49:9 80:13 81:9,24 149:19	January 6:8 29:21 30:3 67:9 115:11 144:5
identify 75:2		intention 56:3 135:13	involving 25:20 94:8	Jensen 50:22,23 90:5,9
illustrating 137:23		interaction 169:9	irrelevant 149:4	Jim 32:4 35:25 36:1 37:24 38:22 40:15 41:2,3 47:11 48:17
illustration 138:1 167:10		interconnect 174:4	Irvine 90:10	
impact 120:15		interest 23:7 174:3	island 31:12 40:6, 7,9,11,17 46:18 50:1,3,9 53:24 54:21 55:5 56:1 58:7 61:15 68:8 88:10 91:3 118:1,8, 14 122:3 124:15 129:20 157:5,12,14 159:9,24	
importance 7:6		interested 179:17		
important 6:23 7:1,23 8:1,14		interim 55:20		
impression 15:13 17:22		internally 84:16		
inches 131:5,17 132:1 161:9		international 11:15 138:25		
incident 94:8 110:16,24 115:9 122:18 141:23	informing 130:4	internet 28:25		
include 105:24	infrastructure 51:16	interpret 82:11		
		interrupt 61:1		
		introduce 54:2		

50:22 52:7 53:11 56:9 58:2 59:11,13 62:1 63:5,23 68:14, 20 72:16,25 76:12, 25 78:7 79:10,13, 15,17,23 80:7 84:19 85:20 86:13 88:4 90:5,9 91:18 100:20 101:17 103:13,16 112:24 133:17 135:11 137:25 138:14 141:19,20 145:16 149:6,12 153:24 166:5,6 168:24	86:12 91:7 93:16 100:11,15,20 102:11 107:20 112:8,19 113:2 114:7,9,14 116:6 124:21 125:3,16,20 126:7 127:8,12 129:9 130:15 132:13 134:16 135:2 136:10 139:5 140:17,20 141:24 143:13 149:23 150:2 151:21 152:3, 14 166:6 170:2	112:21 129:14 134:11 153:4 157:24 158:1 163:13,16	leased 20:2 leases 20:10 leasing 20:4,7 65:21 leave 87:21 94:3 159:1 167:19 173:1 leaving 33:6 107:25 116:21 left 80:17 legal 81:15 length 16:6 letter 10:8,9,10 173:14 letting 37:4 level 10:24 26:25 60:13 159:16 levies 97:6 liaise 79:25 liaising 66:16 liaison 50:21 78:9 80:6 108:14,15 library 10:1 license 5:15 69:23 70:2 life 13:19 18:13 23:8 27:16 28:10 115:8 light 27:17 28:1,20 43:5 110:7,10,17, 20,25 111:12 126:19 131:7,14 132:1,6 lightening 161:19 163:8 lighting 127:19 171:14 lightning 106:14, 15,23,24 107:5,8 115:15,21 160:15, 17,21 161:16,21,23 166:21 167:3,4,8,14 171:6 lights 27:22 28:9, 15 29:4 42:22 44:3 98:1 104:7,8 105:2,	3,12,13,19,24 112:6,9,11,13 113:4 116:20,24 117:3 124:21 126:23 129:3,5,9,13,15 130:9,16,23 131:25 135:12,13,16,24 136:12 137:2,3,24 138:1,13 142:2 170:20 likelihood 124:2 167:6 limits 57:17 lines 51:14,15 159:24 listen 7:10 84:4 listened 100:9 live 147:22 Lloys 5:17 6:5 16:18 41:21 49:15 129:18 134:21 137:22 147:11 148:4 149:8 177:6 178:13 179:6 locate 35:7 83:10 located 44:8 73:25 90:8 126:7 locating 73:14 74:15 76:14 location 44:18 46:6,16 49:13,16 53:19 57:2,8,10,11, 13 71:16 72:19,23, 24 73:15,21 75:13 78:16 97:2 99:18 109:10 119:9 122:23,24 123:11, 15 159:21 164:6 165:13 locations 49:21 50:11 61:18 73:5 77:24 81:23 129:12 155:24 156:19 159:20 logistics 41:6 Lois 140:4,6 long 87:12,15 91:14 92:13 95:11 124:13 164:12	
Joaquin 60:5 103:1 106:10 110:7,25 129:14 157:6 165:5	Kaschak's 76:8 116:24 127:1 132:21 139:16 keeping 67:8 104:15,22 120:4 142:24 Kelsey 41:18 Kennedy/jenks 60:12,13 80:3 173:16 Kern 64:18,19 key 143:17 kill 85:22 killed 6:8 25:25 27:24 39:17,18,19, 21,23 49:17 51:8 54:19 57:14 69:25 70:22 94:17 95:12 115:17 kills 154:7 kind 11:5 12:23 13:22 14:5 19:6 21:2 23:4 29:7 33:9 36:7 38:5 41:1,23 47:13,15 64:4 76:18 89:2,23 93:7 96:19 97:13,23 98:17 103:14 115:3 120:4 122:3 128:5 132:3 137:6 169:9 kinds 35:3 86:9 Kit 166:21 knew 17:19 31:24 35:16 55:14 62:10 66:13 75:18 99:14 102:8 110:16	knock 113:17 knowing 124:10 knowledge 6:11 19:1 25:24 27:14 29:21 31:9 94:1 171:3 172:13 176:21 Knudtson 117:23 125:24 126:15 161:2 169:15 172:1, 3,15,21	<hr/> L <hr/> lack 127:14 Lacks 160:25 land 13:5 17:11 20:3 34:19,25 38:7 44:10 61:3 65:21 72:12,23 118:20,25 122:21,22 123:13 124:10 134:3 157:16 159:17 landing 53:17 large 38:1,5 largely 127:3 late 151:9 latitude 73:4 Law 5:12 lawyer 153:12,19 Lawyers 6:15 layer 63:2 66:4 laypeople 82:18 lead 81:5 101:18 leader 41:1 leads 58:3 learned 20:24 21:1 23:19 57:16 66:17 87:25 lease 20:14 58:10	leaked 20:2 leases 20:10 leasing 20:4,7 65:21 leave 87:21 94:3 159:1 167:19 173:1 leaving 33:6 107:25 116:21 left 80:17 legal 81:15 length 16:6 letter 10:8,9,10 173:14 letting 37:4 level 10:24 26:25 60:13 159:16 levies 97:6 liaise 79:25 liaising 66:16 liaison 50:21 78:9 80:6 108:14,15 library 10:1 license 5:15 69:23 70:2 life 13:19 18:13 23:8 27:16 28:10 115:8 light 27:17 28:1,20 43:5 110:7,10,17, 20,25 111:12 126:19 131:7,14 132:1,6 lightening 161:19 163:8 lighting 127:19 171:14 lightning 106:14, 15,23,24 107:5,8 115:15,21 160:15, 17,21 161:16,21,23 166:21 167:3,4,8,14 171:6 lights 27:22 28:9, 15 29:4 42:22 44:3 98:1 104:7,8 105:2,	3,12,13,19,24 112:6,9,11,13 113:4 116:20,24 117:3 124:21 126:23 129:3,5,9,13,15 130:9,16,23 131:25 135:12,13,16,24 136:12 137:2,3,24 138:1,13 142:2 170:20 likelihood 124:2 167:6 limits 57:17 lines 51:14,15 159:24 listen 7:10 84:4 listened 100:9 live 147:22 Lloys 5:17 6:5 16:18 41:21 49:15 129:18 134:21 137:22 147:11 148:4 149:8 177:6 178:13 179:6 locate 35:7 83:10 located 44:8 73:25 90:8 126:7 locating 73:14 74:15 76:14 location 44:18 46:6,16 49:13,16 53:19 57:2,8,10,11, 13 71:16 72:19,23, 24 73:15,21 75:13 78:16 97:2 99:18 109:10 119:9 122:23,24 123:11, 15 159:21 164:6 165:13 locations 49:21 50:11 61:18 73:5 77:24 81:23 129:12 155:24 156:19 159:20 logistics 41:6 Lois 140:4,6 long 87:12,15 91:14 92:13 95:11 124:13 164:12
<hr/> K <hr/> KAREN 5:4 Kaschak 22:13 59:12 60:11 62:1,3, 4,21 63:4 64:15 66:7,10 69:21 71:7 76:12,15,18 79:11 81:22 84:6,13,25					

longer 102:25 103:2, 124:3 165:2, 4 173:25	25:3 33:25 75:7 83:17 84:9 85:7 103:11 129:3	meaning 50:4 68:24 73:23 100:9 109:18 122:7 136:16 142:23 145:24,25 161:23	132:14 134:2,3,4,15 140:18 151:8 157:5 159:8 160:9 168:14, 16 169:8,12 171:7 175:1,3,8,19,22	minute 8:14 114:11 128:19
longitude 73:4	malfunctioning 145:20 146:23			mis-marking 139:20
looked 13:6 81:17 88:7,22 117:20 133:4 144:24 168:21	manage 41:10	means 7:8 25:3 51:14 88:19 124:6 172:14,16	metal 44:6	mislead 137:11
loop 120:4	managed 19:5 65:18 66:4	measurement 26:15 131:18	meteorological 40:18 155:20 157:5	misrepresentatio n 136:17
Los 65:7	management 19:6,10 21:9 33:12, 13 112:22,25	measurements 115:20	meteorologist 41:12	mistakes 159:13
lot 21:4,5 47:18 66:17 80:4 103:7 116:17 125:10 141:20 152:24 175:16	manager 63:24 64:8 66:3 82:4,5	meet 36:15 53:7,12, 22 61:11,14 169:3	meters 160:22	misunderstood 95:2
loud 6:24	managers 21:7 64:3 66:6,16 67:2	meeting 41:20 53:14,21 86:14 88:13,22 89:8,12,18 90:21 91:12,15,17, 25	methodology 21:19	model 34:16 125:13
low 15:9 16:1,12, 13,19,20	managing 19:14, 19,20 20:11 38:5 66:6 67:1 108:17 111:25	meetings 104:14, 22	mets 170:20	models 125:7
lower 162:2	manufacture 71:1	meets 162:3 164:1	Michael 79:15,17 114:8 140:4,17,20 142:24	money 34:24 35:2, 9 47:24 75:5,15, 80:19 104:1,11
<hr/>				
M				
<hr/>				
made 24:18 37:17 42:10 58:23 59:5,19 67:21 68:10 69:5,7, 8,12,15,25 70:4 83:9 90:23,25 92:1, 3,21 93:24 94:6,23 95:6,8,16,24 100:6 102:20 124:7 132:4 164:12 165:8 175:10 178:4	manufactured 97:13	memory 8:25 67:23 80:3 92:14 105:21 130:19 136:2,3 150:17,20 161:21	midpoint 135:17 137:24 138:13	monitoring 66:1 108:5,9 145:14 149:11
magic 27:2 162:13, 15,16	manufacturer 98:10	mentioned 62:11 127:2 128:5	midway 176:1	Montezuma 47:9
main 32:4	map 157:14 159:22	mess 37:7	midwest 13:25	month 95:13 147:8
make 7:21 9:1 17:8 28:16 29:24 46:4 47:19,24 64:8 69:11 76:22 77:5 82:22 83:21,24 84:1,2,3, 16,18 85:21 86:4,7, 9 89:2 94:9 101:8 103:1 123:25 136:11,17 149:23 159:12 165:18 177:8	March 149:6,23 164:10,12,18,21	message 117:6	Mike 22:13 59:12 62:1,3,14,15,17 63:24 68:4,7,18,25 69:9,12,17 71:7 76:12 79:11 84:18, 19 86:12 88:4 91:7, 19 93:16 100:20 108:15 116:8 125:18 133:3,7 135:6 137:16 139:25 140:12 145:16 147:8 150:4, 14 166:5,6 170:2	monthly 87:9
makes 126:18 160:21	Maria 152:15	messages 116:21	Mike's 127:14	months 12:15 92:5,6,13 141:22 144:5 147:14
making 7:6 20:13	Mariah 152:10,16	met 22:13 24:4 38:20,23 39:19,20, 23 40:9 41:24 42:2, 3,4,5,6,7,12 43:7, 16,22 44:15,19,24 49:20,24 50:11 52:16,17 53:20,24 54:4,16 55:2 57:25 58:15 61:18 67:24 68:2 70:17,24 71:1, 4,25 79:21 80:16 82:11 87:19,22 89:10 96:7,21 97:13 98:16,19,20,23 99:1,11,20 100:16, 17 122:18,19 123:2 126:13 128:22 129:4,21 130:6,10	mind 10:18 16:17 17:1 48:19, 54:21 67:8 131:21 146:14 158:18	mountainous 43:24 44:8,12 98:22
	mark 127:21 173:13		mind's 16:18 17:25 19:15	mountains 43:24 44:12 46:20 64:23
	marked 144:18		mindful 118:11,22 125:21	mouth 30:19
	marker 170:22 171:17		mine 141:8 173:20	move 6:25 85:15 87:20 88:11 92:21 93:13 113:16
	marks 150:15		minerals 159:3	moved 90:7
	married 57:19			movie 15:5,13
	master's 11:6			movies 15:17
	material 125:4			moving 44:23 68:22 86:23 88:8 171:9
	materials 8:13 9:18 10:2,13,18 59:6 60:8 113:15 117:14,16			MSC12-00880 5:6
	maximize 164:10			multiple 150:12
	Mcgovern 173:15			municipality 65:1

<hr/> N <hr/> named 54:4 179:11,17 names 25:19 29:10 76:14 86:17 Natoma 5:13 nature 13:23 15:6, 10 28:1 47:25 48:7 50:5 94:16 97:6 100:8 115:21,25 122:4 152:11 161:6 176:2 necessarily 33:25 87:19 91:16 necessity 171:6 needed 33:10 68:21,22 75:9 86:25 96:24 138:14 171:20 176:18 negotiations 67:13 nice 41:20 169:3 nod 6:25 Nods 6:22 nonprofit 62:11 note 126:18 177:3 notes 89:12,15 91:25 104:15,16,22 notify 109:8 164:5 November 148:7, 23 151:6 NRG 5:7 59:6 70:21,23 71:5,6 76:5,6 96:5,16, 97:17 98:8 99:4,17 107:1 163:20,24 164:3 166:14 174:23 177:6 NRG'S 161:13 163:23 NRGS 70:23 number 17:7 27:2 37:22 38:1 51:2 63:1 76:24 77:3 88:19 116:20 130:9	141:4 144:19 153:24 154:3 155:23 162:14,15 165:3 numbered 155:25 numbers 76:19 113:22,23 <hr/> O <hr/> oath 7:8,15,17 8:21 object 28:16 127:17 131:1 172:12 objection 74:6 126:16 131:11,18 151:14,24 152:7 155:12 observed 81:8 observing 14:25 obstruction 27:17, 25 28:20 29:4 42:22 43:2 44:3 98:1 100:7 104:6,8 105:1,3,12,19,24 110:7,10,17,20,25 111:12 112:5,9,11, 12 113:4 116:20,24 117:3 124:21 126:23 127:19 129:5,13 130:16,22 131:6,25 132:1 135:12,13, 137:24 138:1,13 obtained 27:13 78:15 obvious 46:21 56:25 57:1 occasion 42:3 168:12,14 occurred 31:7 46:22 91:11 170:13 October 174:3 odd 141:12 office 41:19 62:15, 16 officer 134:1	offices 5:12 90:7 Oil 22:12,15,16 62:11,12,16 66:13 Oklahoma 11:17 14:2 older 32:9 40:2 168:19 onboard 32:11,22 37:11 38:14 62:17 67:22 68:10,19,25 69:11,13,15 114:14 one-year 145:6,8 ongoing 65:20 74:23 online 96:15 97:11 Onyx 19:8,10,24 20:1,25 23:14 24:19 42:5,8 43:7,23 44:7 48:12,13 62:6 63:14,22 64:8,16,17 81:23 98:22 120:8,9 open-ended 165:24 operate 21:13 115:4 operation 19:7,15, 25 20:2,5,8 21:2 35:21 39:24 40:5 150:11 153:5 operations 17:14 20:22 21:11 63:22 66:1 opinion 97:3 opportunities 34:10 opportunity 8:13 61:6 147:12 159:3 optimal 72:18 optimally 146:1 optimum 72:21 orange 140:25 170:22 171:16 order 164:10 organic 91:17 103:22 104:14 150:11	organization 22:12 70:11 81:1 organizational 19:19 33:9,11 organizations 22:1,2 organized 53:11 original 128:14 originally 34:7 48:13 62:16 143:5 outcome 179:17 Overbroad 117:23 Overview 156:8 owned 157:6 owner 73:1 75:9,10 84:2 owners 31:12 52:1 60:21 74:11 <hr/> P <hr/> packet 9:19 10:8 pages 114:11,12 153:24 156:1 paginated 115:7 pagination 144:19 154:2 paid 121:6 painted 98:10,18 115:25 171:20 painting 100:7 106:5,6 121:17 170:24 Palm 98:23 99:2 paragraph 125:6 129:3 130:8 135:10 142:22 145:23 156:9,21 Pardo 168:5,7,8 169:14 parenthesis 125:10,12 129:6 parses 86:20	parsing 33:19 part 17:16 45:3 55:20,22 60:9 65:4 101:19 108:9 149:7, 9 150:11 151:1 160:25 172:8 parties 41:22 179:16 partner 35:1 64:25 65:6 157:7 pass 137:23 169:15 passed 140:12 Patrick 130:13 Paulo 143:12 pay 83:10 paying 80:4 113:22 payment 120:21 PDC 67:4 70:10 106:22 144:10,12 172:4 PDF 138:2 Peace 22:11,20 people 8:8 12:21 19:20,21 21:10 24:3 25:6,13 28:4 29:12 33:16 35:2 37:22 38:20 41:4 53:13, 17,20 59:18 62:23 65:15 68:22 101:4 105:15,16 106:19 108:3,20 109:6 111:21 147:20 150:12 153:5 158:1 159:5,8,11,17 167:19 176:12 performing 60:13 period 109:2 125:13 158:10 173:1 permission 74:9 75:5,10,12 78:9 83:10 permissions 52:18 permit 69:3,6 78:19 87:11 102:21 106:10 111:1
--	---	---	--	---

118:20,25 121:11 165:5,21	Pine 48:10	posted 101:15	3 64:20 65:3 71:7 81:5	85:15,22 86:12,24 87:21,22 88:11 89:9 91:2 93:13 94:21,24 103:11 105:7 108:6 109:17 113:11 114:19,22 115:1 117:15 120:2,3 121:4 127:1,3,4,5 142:25 145:3,15 148:8 149:20 150:9 152:21,25 155:5,20 156:8 159:11,20,21 165:12 175:19 176:17
permits 38:9 78:17 164:24	piping 167:12	potential 13:6,7, 35:8 46:23 50:6 69:1 111:22 119:19 120:16 123:13 124:8, 134:9 148:3 157:17	primary 34:21 38:5 50:24 52:23 108:15	projects 13:2,13, 15 22:21 23:1,8 33:23 34:9 35:3,7 37:25 38:6,7 41:13 50:8 63:1,8 64:2 80:22 81:6 148:11 170:17
permitting 37:25 38:6 101:21 133:19	place 40:18 55:2 72:18,21 74:4 77:24 135:13 159:24 175:7 179:10	potentially 25:7 50:6 126:8 176:23	principal 12:2 36:1 102:8	promising 88:8 89:5 147:13,24
person 18:13 25:8, 9,10 28:14 30:24 32:16 45:9 48:14 52:4,16,20, 62:22 75:2 76:22 79:8 85:14 101:18 108:8 145:14 166:2 168:16 169:25 179:13	placement 129:6 169:12 175:2,14,21	power 50:17,19,21 51:6 66:21 83:5 88:10 89:19,24 90:3,9 91:3,6 142:19,20 147:21 174:5	principally 145:14	pronounce 125:9
person's 99:6	places 98:24	practice 99:19	principals 60:23	pronouncing 143:13
personal 19:1	Plaintiff(s) 5:5	practices 111:15 112:22 118:13	print 177:3,4	properly 93:1
personally 5:15 27:6 28:25 29:3 61:19	plan 12:24 35:4 82:19 159:11	preexisting 42:5	prior 120:6	properties 29:17, 19 31:10,15 69:1 157:7 159:3
personnel 33:12, 13	plane 14:18 122:4, 5	preference 9:5	private 118:7	property 20:12,17 39:15 55:11,15,20 64:21 65:18 66:2,5 71:18 74:12 117:20 122:9,12 159:22 160:2
perspective 100:25 101:8 105:1 113:2,6 128:9 153:19	planes 15:14	preliminarily 76:10 79:12	privileged 57:17	proposing 157:4 160:9
Peter 80:8,10,11	planet 16:5	preliminary 51:12, 17 71:8 89:25	problem 8:3,6 73:14 93:10 150:20, 25	protect 171:7
philosophical 132:15	plans 123:5	preparation 9:17 121:15 128:19 129:22 135:8 138:16 144:24	problems 151:22 173:15	Protection 115:15
phone 53:5	planting 44:14	prepare 79:25	Procedure 178:1	provide 28:16 161:22 175:20
photograph 122:20	plug 94:21	prepared 102:12 153:9	proceed 6:18 95:7	provided 9:19 59:7 60:2 104:17,20 111:7,8 121:22
photographs 156:18	point 22:24 24:19 30:2 32:4 35:20,23 37:13 42:16 46:4 47:20 50:24 51:5 62:20 63:13 65:17 68:21 72:17 82:1 83:9 91:2,19 92:20 110:13 111:20 122:7 127:2 128:12 135:3 145:21 147:19 153:10	present 153:8,15, 18	process 37:19 38:11 46:8,25 51:19 60:5 61:17 67:14 74:24 78:16,22 79:4,20 81:18 91:10,17 101:11,19, 25 102:16 103:2 120:13 133:19 175:7	providing 71:4
physical 161:6	politically 23:6 35:15	presenting 122:1	producer 21:25 23:9	public 38:9 58:18 59:5 102:24 103:5
physically 49:16	portion 58:14 119:6	pretty 12:19 44:6 110:2 131:17	product 66:14	
picked 156:18	portions 170:13	previous 14:7 19:23	program 47:1	
picture 163:4,7	position 11:25 36:8 66:11	price 71:12 99:10 105:23	progression 76:13 101:16	
piece 49:6 64:21	positions 12:1	prices 117:8	project 10:12 12:21,24 13:12 19:20 20:1,3,16,17 24:20 30:9 31:1,13, 18 33:13,14 35:9 39:4 41:1,15 48:7, 49:10 54:18 55:19 61:23 62:1 63:14,24 64:3,5,8,16 65:13, 14 67:22 68:8,16,23 71:4 77:1,9 80:15, 20 81:9,14,19,24 82:4,5 83:3,11,23	
pieced 76:1	positive 7:22	pricing 105:15,16 116:22 127:18,25 139:15 140:17		
pieces 55:9 72:23	possibilities 51:1	primarily 13:4 34:9,19 52:22 58:2,		
piggyback 51:16	possibility 41:14 49:4,23 50:2 64:23			
pile 116:17	possibly 72:17			
pilot 13:22 18:23	post-incident 153:1			

publicly 97:20	19:16 100:12	reactivate 150:17	recommendations 84:2 100:6,20 105:2 128:16 134:15 139:12 146:9 171:13,16,19 175:2,11	rejuvenate 173:2
Pueliu 70:18 143:12,15	qualified 19:9,14, 18 68:5 69:10,14,22	read 45:12,18 60:1 82:18 133:23 136:4 141:18 143:10 144:2 149:14 167:7 176:15,20 178:3		relate 73:13
pull 7:20 94:21	quarter 150:5 161:10			related 22:4,23
purchase 21:5 34:24 65:10 98:8	quarterly 87:8,9 149:25 150:18	reading 96:24 176:22,24	recommended 62:9 67:25 72:24 128:15 160:11 163:22 175:25	relates 39:1
purchased 19:8 62:6 82:3,7	question 9:9,14 17:9 30:1 36:24 55:8 70:5 77:21,22 84:6 85:16,17 86:2,3 95:2 103:6,8 104:18,21 109:13,14 123:9 135:25 143:17 144:7 146:14 159:15 170:22,24 172:6 174:17 176:8	real 19:1 76:11 88:22 172:6		relation 175:1,19
purchasing 19:23 23:14		realize 56:19	recommending 96:18	relationship 29:12 41:4 68:6
purpose 27:25 28:15 34:5 56:18 157:2		reason 55:13 88:25 101:7 131:13 171:1	record 6:4,21 90:18 113:24 140:1	relative 6:10 24:16 25:22 26:5,12 27:14 28:19,20 36:8 42:3 45:16,23 51:10 54:16 57:24 58:7 66:21 74:14 75:13 87:12,14 95:21 118:17 123:14 127:19 133:7 140:18 150:19 165:22 173:15
purposes 57:3		reasoning 95:18	recreationally 47:6	
pursuant 171:2 178:1		recall 88:3 93:2 143:15,16 151:21,25 171:8	red 28:9 43:5 98:4,10,14 111:18	relevant 33:20 83:21 88:15
pursue 90:25 94:24 165:12	questions 6:10 8:5 61:6,7 102:23 142:16 168:2,9 174:25	received 86:22 87:9 88:6 91:22 92:4,24 138:18 148:3 152:15	redundancy 145:22	reliable 128:8
pushed 92:18			redundant 146:18 170:7	relied 21:18 23:24 24:1,3 50:17 82:13 106:19 175:13
pushing 22:5	quickly 37:6	receiving 135:20	refer 142:18	rely 146:12 147:25 163:12,13
put 7:17 12:23 15:19 18:4 27:22 28:21 35:9 40:18 49:24,25 50:11,13 56:16 59:8,15 60:7 63:16,18 66:11 73:1,2 74:4,10 75:16 76:25 77:17,20 80:19 82:17 87:20 93:6 99:9,18 104:8 108:17 113:4 131:7,14,25 132:1,4,5 136:11 147:12 148:5 161:19,23 163:11 164:23	quote 135:12 152:15	recently 15:23	reference 58:23 81:7 129:2 139:4 141:2,3 161:15	relying 7:24 75:6 85:4 93:21 100:3 102:11 146:9 158:2
	quote/unquote 89:5	recipient 116:12,14 124:24	referencing 176:20	remember 8:11,15,19,20 15:4 25:8 33:1 39:25 40:19,21 43:12,14 45:4 53:6,8,14,21 62:18 63:9 67:12 69:19 70:6 73:19 89:15 93:3,5,9,11,12,19 94:18 95:19 96:9 97:25 98:1,2,3,6 99:5,10,12,21 101:22 103:17,25 104:4,9,12,21 105:14,15,16,17 106:24 112:7,10,20 116:23 117:1 119:8 121:13 123:19 124:23,25 125:3 126:4,10,11,24 127:20 128:2,6,14,21,23 129:8,12,23 130:15,18
	<hr/> R <hr/>	recipients 112:17,18	referred 112:12 140:5 157:12	
	radar 129:1	recognize 141:7 144:15,21 154:5,8,11,15,17,19,21,24 155:2,3,6,8,11 173:17	referring 61:3 125:18	
	raise 124:12	recognized 45:22	refine 76:18	
	raised 13:25 14:1		refresh 135:22 149:15 152:17 167:2	
	ran 21:6	recollection 8:22 10:14,19 25:4,46:12,16,17 71:7 94:6 99:13 127:24 132:13 135:23 136:7 140:11 142:8,10 144:8 147:16 150:1,24 151:2,19 152:17 165:1 167:3 175:14,16,24	refreshe 127:24 140:11 144:8	
puts 14:18	ranch 19:8,10,24 20:1,25 21:5 23:14 24:19 42:5,8,16,18 43:8 47:9 48:12,13 62:6 63:14,22 64:8,16,17,24 65:23 66:3,4 81:24 82:3,4,6 120:8,9		refreshing 10:14 130:19	
Putten 174:17,19,21,22 176:4		recommend 85:15 96:19	regard 22:3 82:14 94:10 129:9,10	
putting 15:18 30:19 50:4 55:22 76:11 99:14,20 111:21 117:8 120:14 132:6 160:12 164:4	range 98:22	recommendation 84:16 106:7 170:20	regenerate 159:3	
	rates 149:24		regulation 26:19	
	reach 54:20 78:24 79:8		regulations 25:22 26:11 162:4 164:1	
	reached 134:18			
<hr/> Q <hr/>				
qualifications				

132:17,22 135:2,4, 18,20 136:9,14 137:4,5,18 138:8, 12,15 140:7,13,21 141:24 142:1,5,6 143:9 144:7,9,12 145:17,21 147:2 148:6,10 149:12 151:11,17 152:2,8,9 157:23 160:4 165:7 168:22 171:10,15 173:5 175:4 176:10	representations 59:4 163:14 representative 38:19 54:14 99:4 109:16 144:10 represented 58:18 requests 151:22 require 111:1,4 required 29:5 110:7,17,25 131:4 requirement 106:23 110:9 131:1 requirements 24:16 25:22 28:19 59:25 130:24 131:8 requires 26:25 130:22 131:24 requiring 110:19 111:11 research 27:6,7 28:24 29:1,3,8 33:24 50:12 54:25 55:8,10 69:13 86:25 88:9 96:15,17 105:9 159:16 163:2 researching 33:18 resource 49:24 65:1,4,5 120:9 resources 5:8 10:11 22:6 23:7 34:11 157:4 respective 79:20 respond 6:24 responding 132:13 response 7:3 8:4 148:8 152:24 responsibilities 12:18 19:2 45:23 139:16 responsibility 66:1,8 69:10 76:9 102:6 103:18 108:9 117:8 127:7 131:9 166:3,9 responsible	33:22,24 45:6 63:21 75:2 110:3 111:19 120:23,24 145:14 responsive 151:22 152:4 restrictions 25:14 26:5 50:2 result 49:19 158:22 resulted 30:13 retain 35:20 67:14 retained 45:5 return 49:12 review 8:13 9:18 10:2,17 93:3,5 97:1 100:11 124:25 135:8,20 174:9 reviewed 10:13 116:10,15 121:14 129:22 135:21 142:14 173:13 reviewing 81:15 Rich 25:15 40:16 41:3,9, 67:25 68:1 69:19 71:3 72:24 74:20 82:13 83:18 92:24 96:18 128:14 139:10 165:15 169:8 170:10,11 171:5,13,22 174:25 Richard 24:1 49:22 119:17,18 Richmond 142:17, 19 Rick 38:23 52:14 139:5 right-hand 155:4 rights 81:6 ring 136:23,24 risk 111:21 river 64:19 65:4 rod 106:14,15,23, 25 107:5,8 115:21 160:15,17,21 161:16,19,21,24 163:8 167:4,8,15 171:6	rods 166:22 Roger 6:6 role 37:23,24 40:5 41:11,13 45:16 81:4 175:18 room 7:24 rotation 173:3 rounding 41:3 RRG 6:11 11:23,24 12:5,19,22 14:7 17:10 19:23 21:21 22:24 23:10,13,21 28:8 30:9 31:14,17 32:2,11,14,20,25 34:5 35:20,24 36:21 38:15,18 45:5,16 48:5,14 50:23 52:4 58:13,18 61:22,24 62:4,18 63:22 65:12,25 66:4 68:24 70:11 71:5 73:23 75:1 78:5,12 80:14, 16 81:3,4 82:22,24 83:14 84:7,9,19 85:7,21 88:20 100:9,19 101:8 102:15 106:21 108:5,12,13,20 109:8,18,22 117:4 118:17 120:12 123:11,20 124:12 136:15 137:7 144:15,20 145:15 155:19 160:6,9 161:23 164:9 166:2 169:25 170:8,12, 175:19,25 176:12 RRG'S 45:23 52:22 56:23 RRG1836 142:12 ruled 50:1 103:9 rules 6:17 131:13 running 45:6 64:2, 5,6 149:24 runs 39:23	safe 131:9 safety 100:21 111:14,21,25 112:22,25 113:1 salary 12:7,11 salesman 125:8 salesperson 99:13 San 60:5 103:1 106:10 110:7,25 129:14 157:6 165:5 Sandbar 25:19 86:16 sat 17:23 46:11 86:15 satisfied 146:18 Scheibel 67:24 128:7 139:11 science 23:16 scribbling 173:19 seasons 158:12, 20,22 secret 101:3,5 Section 178:1 security 24:13 seed 15:22 57:12 seeding 44:14 57:3 seeds 15:9,19 Seeking 134:15 sell 97:23 selling 98:3 sells 96:7 send 112:11 129:25 135:15 138:3 sending 124:23 sense 15:25 25:12 28:14 29:24 47:19 100:14 109:25 111:17,20 130:21 132:3 148:2 sensor 146:19 sensors 92:25 93:14 94:4 145:25 146:2,5,16
---	--	---	---	---

sentence 125:14 145:23 159:21	silver 44:6	163:15,18 165:20 167:21 169:5 176:9	sounds 87:5 134:20	spoke 79:24 143:2
sequence 10:15	Similar 66:23		source 25:13,14 57:24 58:6 95:20	spot 44:20
sequestering 49:4	Simon 24:1 25:15 40:16 41:3,8,25 49:22 50:10 53:16 68:1 69:19 71:3,23 72:10,12,16,17,21, 24 73:3 74:20 76:3, 14 82:13,15,25 83:17,19,25 84:5,12 86:21 88:5,7 89:4 92:24 93:15,17 96:18,19 119:17,18, 21 120:6 122:23 128:15 134:17,19 139:5 145:3 147:25 150:2 152:14 160:11 163:21,22 165:15 169:8 170:10,11 171:5,13, 22 174:25 175:1,10, 15	sister 7:13	south 64:18	spots 41:24
serves 92:14		sit 43:15 142:7	speak 6:17,24 10:18 14:25 36:4 45:23 94:21 127:11 167:12 168:25 169:6	spread 15:22
service 152:16		site 55:3,17 103:1 147:13,17 157:20 165:3	speaking 25:17 44:19	Spring 99:2
servicing 152:6		sites 51:2 151:8	speaks 131:18	Springs 98:23
set 75:25 76:20 83:21 103:12 162:3 163:25		sitting 17:5 93:2 104:22	specific 22:16 23:3 25:8 34:2 46:12 47:6 58:25 59:1,23 72:22 76:19 81:8 83:7 101:22 102:5 103:17 104:4,6 111:24 115:20 117:16 129:2 175:17	spun 34:7
sets 33:19		sketchy 128:11	specifically 22:21 24:25 44:18 53:14 54:20 55:1,10 58:23 103:10 115:13,24 117:1 118:12 119:9 122:7 125:3,17 139:24 145:19 157:24 160:4 161:9 176:12	stage 92:2
Shah 67:4 70:9,15 109:16		skill 21:9 33:16,18, 21 159:16	specifications 171:2 175:21	standing 36:4 108:16
Sherree 5:14 36:23 113:24 179:21		skills 19:19 33:9	specificity 27:7 158:8	standpoint 120:11 146:21
shop 108:4 168:17		slightly 44:21 78:18 103:2,3 114:19	specifcs 39:14 82:10	start 50:12 83:11, 17
short 158:10		slow 85:11,12	specs 59:6,8,21 107:2,4	started 12:13 34:6 36:13 62:24 63:10 76:13 78:23
Shorthand 5:14 179:12,22	Simon's 41:11 96:6	slowly 102:21	speculate 16:14	starting 33:8 78:16 149:5
shortly 36:15 62:5 64:25	simply 6:17	small 14:22 39:3,9, 11 149:9	speculating 8:11	state 5:1 6:3 16:17, 25 29:21 48:19,21 131:20 158:18 178:3
show 26:18 114:1 122:21 124:18 127:21 137:3 143:20 144:17,19 173:12	simultaneously 78:19 165:6	smart 111:20	speculation 131:11 155:12	stated 18:17
showed 119:9	single 91:17	Smith 68:3,4 69:5, 22 70:1,14 76:4 99:25 100:3,6,12,19 105:18,23 106:22 107:14 109:6,16 113:3 139:24 140:7, 19 143:7 151:12,15, 22 152:4 161:18,22 169:20,23 170:1,9, 13,17,20	spend 75:5 104:1, 11 113:15	statement 21:16 96:3,4 125:17
showing 118:22 122:20 135:16 138:12	sir 6:14 10:16 12:6, 8 13:14,24 17:12 21:15,20 23:25 24:2 29:14 30:5,8 34:15 35:11 38:24 41:7 42:9 43:4,6,20 45:8 47:3,22 49:1 51:7 56:21 58:8 60:10, 21,24 64:12 65:11, 19 67:20 71:17 73:6,10 74:25 75:17,20 78:10,18 79:7 82:20,23 83:13 87:3 88:2 89:3 90:2 93:23 94:11,13 96:8 97:5 100:13,18 101:14 102:10 106:13,20 112:3,23 114:15,24 115:2 120:5 129:14 132:11 133:9 134:25 141:14 145:5 146:6,8 148:1,14 149:3,18, 21 156:17 160:13	solar 13:10,13 22:6 127:5 142:19,20	spent 25:16	status 37:13 101:24 147:10 148:8
shown 26:11 167:2		sold 65:1 97:22	spike 166:21 167:4	stay 33:7 124:3 173:9
shows 163:7 166:14		sole 58:6		step 48:24 49:20 74:19 88:8 92:3 114:5
shut 51:21,23,24 52:1,2		sort 6:25 20:9 25:10 33:14,18 34:11,25 38:7 41:2 47:18 49:7 55:14 64:1,2 66:4,24 69:3 125:4 131:9 158:12, 162:13 167:20 169:3		Stephens 38:23,25 39:3,14,19 52:14
side 109:17 155:4		sound 87:4 96:13 134:18		steps 86:25 94:15
sign 60:22 78:19 102:8 163:16 177:5				Steve 6:7 153:14
signature 119:3				Stokes 60:13 80:5, 6
signatures 52:19 61:21				stop 95:21
signed 60:20,21 68:17 179:19				

storage 34:8 35:21 45:7,9 47:1 81:6 148:13 157:17	SUPERIOR 5:1	57:10,13 70:23 72:4 76:2,3,14 88:1 89:9, 10 91:18,19 118:23 119:18 131:8 134:23 135:10 142:3 143:9 152:3,9 159:7 167:3 174:6	16:6 28:19 32:22 44:10,14 57:21 61:17 79:14 82:10 90:20 117:4 121:17, 22 122:12 130:13 139:14 147:24 152:25	30:3 31:8 34:7,18 35:20 37:2,7,11,13 39:17 40:10 42:16, 17 45:5,21 46:4 47:21 51:5,20 56:7 62:6,20 63:8,13 65:17 67:8 71:15 81:25 82:1 83:9, 86:22 87:16 88:1,3, 13 89:17 91:7 92:20 95:23 103:21 109:3 110:13 113:15 114:16,18 117:4,19 125:2 127:3 128:12 136:9 138:23 139:14 140:5,16,20 141:22 145:11 146:22 147:19 153:11 158:10 164:24 165:11 173:2 179:10
storing 46:24	supervise 127:12		testified 5:21 168:11 169:22 170:6	times 37:22
strategic 136:22	supervises 62:22		testify 179:8	timing 88:17 91:23 93:18,22 164:8
strategy 135:24	supervising 62:21 127:8	talks 115:20,24 116:19,20 125:7 142:21 145:18 151:7 161:6	testimony 7:21 8:20 172:7 177:3,4 179:11	title 53:2 124:20 129:21 177:6
Street 5:13	supervisor 62:24, 25	tall 42:23,24 43:9, 13,21 96:23 97:9 160:10	testing 99:12	titles 12:1 37:23
strike 88:12 99:3 137:17 156:22	supervisors 127:1	taller 26:13 160:21 162:17	text 156:15 161:17	today 6:10 8:12,21, 24 9:6,17, 25:24 32:17 43:15 70:10 93:2 121:15 128:19 129:17,22 133:4 135:8 138:17 142:7 144:25 147:11
Stringer 37:22 57:17 81:13 132:25 143:21,23 153:15, 18	supposed 104:20 151:8 152:16	task 91:5 98:8 117:1	theorizing 42:2	today's 15:2
Stringer's 173:23	surmised 95:18	teach 7:5	thin 167:12	told 51:23 52:2, 56:8 70:6 74:18 77:23 83:25 90:1 91:21 94:23 95:9,23 96:10 109:12 123:23 129:11 130:22 131:3 132:21 157:20,23 162:11 175:24
strong 136:2	suspect 92:12	team 19:20 56:23 60:9 61:24 65:15 84:16,20 86:10,11, 14 88:4,23 89:8 90:21 91:12 108:24 160:5	thing 7:1 25:10 101:23 106:2 131:10 158:12 162:19, 167:20	tomorrow 148:5
strongest 147:14	sustainability 34:21	teams 19:19	things 8:8,9,10 12:25 13:23 15:5,10 27:23 28:6 34:25 47:24 48:7 50:5 52:18,19 53:1 60:22 65:21 78:17 97:6, 22,23 100:7,8,9 103:23 104:2 109:18 115:21 128:25 130:5 142:2 145:10 151:23 152:24,25 165:3	top 27:22 110:11,14 119:16 129:6 135:17 137:24 138:13 154:25 162:1 167:13 176:1
strongly 146:4	Sweet 11:16	technical 81:5	thinking 48:22 83:4	topic 32:25 104:24
structure 12:23 28:21 33:11	Swiller 10:10 12:4 32:12,13,14, 34:16 35:5,16 37:17 62:8, 10 64:11 65:12 136:16 173:15	Tehachapi 44:12 64:22	thinks 16:18	
structures 29:4	Swiller's 45:13,19	Tehachapi's 48:12	thought 17:3 33:4, 10 46:25 49:23 60:14 66:15,17 137:25	
Structuring 33:15	sworn 5:20 179:8	television 15:17	three-page 127:23 151:4	
studies 11:9,15	system 91:4 166:15,18 171:7	telling 7:22 8:7 9:2 151:21 152:14 167:15	threshold 162:3 163:25	
study 50:16 89:20 174:5	SYSTEMS 5:7	tells 85:23 103:14 164:11	throw 47:18	
stuff 65:23 121:5 158:17	T	temporary 87:17	time 9:14,22 12:11 22:24 23:3,12 25:16	
subject 122:18,19	takes 73:7 164:24	tenants 65:20 74:12		
submit 60:6	taking 33:18 89:15 175:7	tend 147:13		
submittals 101:12	talk 8:8 10:21,23 13:20 32:6 53:5 62:3 67:4 71:3,11, 13 72:16 73:1,18 82:25 85:8,24 86:21 101:20,24 113:13 116:22 123:4 132:18 143:6 152:5 153:7 158:4 159:20	tenure 32:20		
submitted 76:23 119:13 156:23	talked 33:8 46:11, 13 70:17 71:5 73:11 117:14 149:1 151:5 163:25 176:10	Terence 169:19		
suggest 68:2	talking 13:8,22 14:8 39:10 40:11	term 14:15 27:17, 19,20 67:6 172:12, 13,15		
suggested 49:24, 25 68:2 69:17 71:3		terms 9:23 15:25		
suggestion 96:6 165:15				
Suisse 80:21,24				
summary 137:15				
summer 92:19 116:23 147:14,20 151:12				
Sun 82:7				

105:12 123:11 124:12 126:11 130:14 135:19 136:25 138:11 142:5 157:11	79:21 82:14 83:10, 11,15 87:1,19,23 89:10 95:25 96:7,17 97:13 98:9,18,20,23 99:1 100:17 104:24, 25 106:9,10,16 107:17 108:23 109:7,21 119:7 121:4,23 126:6,13 129:21 130:6 140:22 141:23 145:13,19 146:4,15 148:22 150:25 152:6,16 159:8,18, 23 160:10 164:4 171:20 175:22	trial 7:19 8:25 trip 42:10 44:17 49:12 53:25 true 15:15 16:7,11 17:17,25 18:16,19 19:3 22:14 23:1,10, 17,18 27:8,9 28:10 30:7,14,17 34:3 35:5 47:21 48:8,9 56:20 66:22 71:20 81:9 82:19 84:14 87:18 88:20 96:1,3, 4 101:13 102:6 104:15 105:9,25 107:12,19 112:22 115:1,4 121:6,15, 16,24 122:13 123:20,21,25 130:24 132:10 134:24 135:6 137:12,13 138:6,7 140:22 141:4 142:9, 25 144:13 145:4,8 146:9,12,19 150:9 155:11 156:16 158:2 159:25 162:6 163:14,17 166:9,12 167:17,18 173:10 174:1 178:6	<hr/> U <hr/> UCLA 11:4,11 Uh-huh 139:6 ultimate 64:9 ultimately 45:11 51:21 66:7 67:18 68:12 69:16 75:4 82:25 84:3,11 110:10 120:14 121:5 undergraduate 11:14 underneath 159:21 understand 7:5,25 8:20 9:10,11 15:8, 14,19,20 16:5 17:9, 16 31:10 37:21 38:25 39:5 40:4 45:15 68:17 72:20 77:8,12,15,23 84:5 85:17 91:25 92:1 109:14 111:21 123:22 155:10 158:21,25 159:12, 14 understanding 15:14 16:9 23:6 24:15 25:8,11 26:2, 4,7 27:12,25 33:3 35:23 40:6 43:8 45:12 52:13 56:5, 14,15 57:23 71:19 75:21 77:7 87:17 91:13 125:11,17 130:21 135:14,21 149:3 156:23 158:19 175:5,9 176:18 understands 16:19 understood 7:4 9:15 34:1,6 38:8 42:24 57:25 77:17 78:11 84:4 86:8 89:4 unique 147:17 United 115:15	unreliable 67:25 128:15 update 142:22 updated 145:2 updating 144:9 upset 30:24 upsetting 30:16 upside 34:22 urge 146:4 utilized 118:13 utilizing 159:8,17 <hr/> V <hr/> V-bar 25:18,19 86:15,16 119:17 149:24 vague 57:10 117:23 123:9 125:24 126:2,15 valley 36:19 38:3 99:2 127:5 Van 174:17,19,21 176:4 variety 97:12 98:4 119:6 vendor 96:6 128:1 131:24 132:4 152:5, 10 vendors 76:2,14 97:12 108:25 109:15 116:21 139:15 163:21 verbal 71:9,10 99:24 verbally 96:9 Vernon 65:2 Version 115:25 versus 8:11 97:8 157:12 vet 12:23 viable 50:9 83:12 85:5,23 89:22 165:12
topography 44:10 touch 148:9 tour 49:7 tower 24:4 26:8,12 27:17 28:1 30:6 42:2,3 50:7 52:17 53:19 55:2 56:17 57:11,14,25 58:1, 15,20 59:5,22 67:24 68:2 70:24 72:13 82:11 87:12,15,18 92:25 93:10,14 94:3,4,12,15,17 96:20,21 97:9,22 98:13,16,17,19 99:8,11,18,20 100:4,8,16 101:1 106:5,6,12 107:2,9 108:17 109:4,9,11 110:8 112:5,6 113:4 119:10 121:17 122:18,19 123:2,23 124:2 128:22 129:3, 4,7,9 130:10,23 131:5 132:14 134:2, 3,4,15 135:13,17 137:25 138:14 140:18 142:2,23 150:15 151:8 155:20 157:5 160:9, 11,20 161:1,7,24 162:2 163:19,22 164:9 165:10 167:11, 169:12 170:24 175:1,3,8,19 176:1 tower/obstruction 130:9 towers 24:17 26:5 27:23 40:18 41:24 42:4,5,6,7,12 43:7, 16,22 44:15,19,24 49:20,25 50:5,11 54:16 55:22,23,25 56:4,9,20 61:18 67:16 69:4 71:1,4, 12 72:16,23 73:15, 21,25 74:4,10,13,15 75:16 77:9,16,24	track 85:20 148:4 tract 40:12 46:17 53:10,15,18 54:22 58:1,11,14 60:5 61:12 68:8 113:5 117:19,21,22 118:13 119:9 122:13,19 124:14 157:12,15 158:9 159:22 168:12 170:14 172:7 175:2, 19 traffic 118:6 125:10 training 13:23 111:14,24 112:2 trans- 33:6 transcribed 179:13 transcript 7:20 178:4 transfer 50:14 81:6 transferrable 33:21 transition 50:16 transitioned 68:23 transmission 51:1,11,13 88:10 89:20,21 90:25 94:2 transmitted 82:18 83:20 traveling 147:11 Tree 48:10	truth 5:20,21 7:18, 22,24 8:4,7 9:2 179:8,9 turbine 42:18 turbines 42:16,17, 21 43:18 120:14 turn 64:3 128:4,17 147:20 153:21 154:2 turned 128:8 TV 15:5,13 twins 106:11 two-quarter 149:10 type 13:2 21:19 28:21 35:12,17 101:23 106:12 types 158:22 typewriting 179:14		

view 91:2	11	23:9,17 41:12,15	124:11 125:13	<hr/> Z <hr/>
Virginia 11:18	weather 158:20	42:16,17,21 43:18	128:10 153:13	
visibility 28:2	weathered 44:6	44:20,23 46:15,18,	156:16 157:8	
97:24 100:7 104:10,	Webb 40:8,11	22 47:1,8,21 48:6,	worked 21:8 22:23	Zela 168:5,7,8
11,12 106:2 140:25	46:17 53:9,15,18,21	10,18 49:24 50:4,8,	23:22 37:25 48:9,18	169:14
141:1,25 142:1,3,6,	54:22 58:1,10,14	12 64:23 65:1,3,5	59:11 63:1 65:16	Zurich 39:7,12
8,10	60:5 61:12 68:8	69:1 81:19 87:21,22	68:14 80:15,25	80:11,17,25
visible 28:16 98:14	72:4 113:5 117:19,	88:7 91:2 94:24	working 11:5 14:7	
125:8	21,22 118:1,13	119:18 120:9 145:4	38:1 52:17 62:11	
vision 56:15	119:9 122:13,19	148:3 149:9 176:14,	63:7 66:9 68:23	
visit 40:25 41:5	124:14 138:12	17	105:19 107:14	
49:13,19 55:3,17	154:25 157:5,12	wind-energy	109:6 119:25 127:3,	
103:1 157:20	158:9 159:22	22:25 66:19,20	4,11	
visited 168:11	168:11 170:14	wind-resource	works 39:4 41:12	
visits 165:3	172:7 175:1,19	64:22	52:14 77:1,7 81:1,3	
visually 55:9	website 161:14	wind-to-energy	124:5 162:21	
voice 7:2 64:13	163:23,24 164:3	22:4,21 46:5 49:10	worry 37:3	
volunteer 22:9	week 64:25	51:22 81:9,14,24	worth 41:15 83:22	
volunteered	weeks 138:22	84:23 85:1 89:8	86:23 88:7 91:23	
22:10,11	150:16	95:7 127:15 149:20	148:4 149:2	
volunteering 22:2	well-educated	152:21 165:12	wrap 149:11	
	28:14	wind-water 120:2,	wrapped 10:18	
<hr/> W <hr/>	well-qualified	3	writes 149:23	
waiting 148:25	100:16	windmills 46:19,21	written 154:25	
walking 55:9	Western 34:8	47:9	wrong 16:17 26:3	
wall 47:18	Wetlands 29:17,19	winds 96:25 147:13	48:21	
wanted 97:7	31:10,12,14,17,20	Winther 40:1,2	wrote 156:10 162:7	
120:17,18 152:4	32:3 35:19,20,24	53:23 54:11,14		
165:6	38:18,19 39:1,4,14,	71:24 168:14,16	<hr/> Y <hr/>	
warning 24:16	21 41:4,16 45:6,24	169:1, 176:11,13,23	yards 16:7	
100:21	51:3,23 52:2,5,21	Winther's 40:4	year 12:10,12,15	
warranted 66:11	53:3 69:1 73:8,18,	within-entitled	88:14,23 89:1	
watching 108:16	21 75:3,15 76:24	179:9	90:21,24 91:13	
water 13:4 20:19	77:1,5,13,15,23	WITNESS' 177:1	123:24 145:13	
34:9,13, 35:21	78:1,5,15 79:4	Women's 138:25	148:11,22 149:1,4,	
36:16 38:3 45:7,9	80:15,16 83:3 85:8,	wonderful 24:14	11 150:6,15 159:2	
46:24 47:1 55:19	14,25 89:10 94:20,	wondering 46:14	165:11,16	
64:20 65:4 81:6,10	23 95:5,16,24	147:5	year's 86:23 88:6	
83:4 148:13 157:17	109:8,12 113:10	word 15:21 113:3	91:22 92:4 148:3	
water-carbon	117:14 118:11,17	154:24	149:2	
120:2,3	120:1,22 121:6	words 7:3 30:19	years 8:9 124:6,13	
ways 51:13	148:12,16 152:20	177:3,4	yesterday 10:3	
WDS 11:23 34:8,9,	155:19 157:7 158:5	work 10:11 19:23	125:16	
	wheat 118:5	21:21 28:8 39:11	young 66:25	
	white 98:4,10,14	47:16 54:18 56:20	Younger 32:9,10	
	116:1 163:6	62:4 66:14 69:3		
	Whomever 107:16	79:10 80:4,11 87:19		
	wind 13:9,10,15	94:2 99:15 117:22		
	21:24,25 22:6,17			